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10 *Attorneys for Stephen A. Finn*  
11 *and Winery Rehabilitation, LLC*

12 **UNITED STATES BANKRUPTCY COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SANTA ROSA DIVISION**

15 In re

16 SVP,

17 Debtor.

Case No. 17-10067-RLE

CHAPTER 11

**DECLARATION OF PHILIP S. WARDEN**

Hearing: January 31, 2020  
Time: 10:00 a.m.  
Place: 1300 Clay Street, Room 201  
Oakland CA 94612  
Judge: Hon. Roger L. Efremsky

19 I, Philip S. Warden, declare under penalty of perjury as follows:

20 1. I make this declaration in support of the Secured Creditors' Response to Trustee's  
21 Objection to Claims of Stephen A. Finn and Winery Rehabilitation, LLC. Unless noted otherwise,  
22 I have personal knowledge of the facts stated below and I could and would testify to the following  
23 if called as a witness to do so. I will appear at the January 31, 2020 hearing.

24 2. I am a partner in Pillsbury Winthrop Shaw Pittman LLP. I am based in our San  
25 Francisco office.

26 3. I am lead counsel of record to the Secured Creditors in this case.

1           4.       Attached as Exhibit “A” to this Declaration is a true copy of the *Notice of Trustee’s*  
2 *Intention to Compromise Controversy with Various Creditors and Litigants* (the “Notice of  
3 Intention to Compromise”) filed on January 31, 2019 in Case No. 17-10065-RLE (the “SVC  
4 Case”) [SVC Case Dkt. No. 408].

5           5.       Attached as Exhibit “B” to this Declaration is a true copy of the *Application for*  
6 *Order Authorizing Trustee to Enter into Compromise with Various Creditors and Litigants* (the  
7 “Compromise Motion”) filed on April 3, 2019 in the SVC Case [SVC Case Dkt. No. 422].

8           6.       Attached as Exhibit “C” to this Declaration is a true copy of the *Declaration of*  
9 *Aron M. Oliner in Support of Application for Order Authorizing Trustee to Enter into Compromise*  
10 *with Various Creditors and Litigants* (the “Oliner Declaration”) filed on April 3, 2019 in the SVC  
11 Case [SVC Case Dkt. No. 422-1].

12           7.       Attached as Exhibit “D” to this Declaration is a true copy of the Settlement  
13 Agreement entered into by and among Angelica de Vere, Teresa Sullivan, Sonyia Grabski,  
14 Elizabeth Matulich, Trinity Scott, Stephen A. Finn, Winery Rehabilitation, LLC, and Timothy W.  
15 Hoffman, chapter 11 trustee of the bankruptcy estates of SVC and SVP (the “Settlement  
16 Agreement”) filed on April 3, 2019 as Exhibit A to the Oliner Declaration in the SVC Case [SVC  
17 Case Dkt. No. 422-1, Exhibit A].

18           8.       Attached as Exhibit “E” to this Declaration is a true copy of the *Trustee’s Chapter*  
19 *11 Status Conference Statement* (the “Status Conference Statement”) filed on May 13, 2019 in the  
20 SVC Case [SVC Case Dkt. No. 433].

21           9.       Attached as Exhibit “F” to this Declaration is a true copy of this Court’s *Order*  
22 *Authorizing Trustee to Enter into Compromise with Various Creditors and Litigants* (the  
23 “Compromise Order”) filed on May 13, 2019 in the SVC Case [SVC Case Dkt. No. 435].

24           10.      Attached as Exhibit “G” to this Declaration is a true copy of the Transcript of  
25 Proceedings Before The Honorable Jennifer Roger L. Efremsky, United States Bankruptcy Judge,  
26 dated May 8, 2019.

1 Dated: January 13, 2020

2 By /s/ Philip S. Warden  
3 Philip S. Warden

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# EXHIBIT A

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SANTA ROSA DIVISION**

In re

SVC,

Debtor.

Case No. 17-10065 RLE

(Jointly Administered)

Chapter 11

**NOTICE OF TRUSTEE'S INTENTION TO  
COMPROMISE CONTROVERSY WITH  
VARIOUS CREDITORS AND LITIGANTS;  
OPPORTUNITY FOR HEARING**

[NO HEARING SCHEDULED]

In re

SVP,

Debtor.

**TO THE DEBTORS, ALL CREDITORS, PARTIES IN INTEREST, AND THE OFFICE OF  
THE UNITED STATES TRUSTEE:**

**PLEASE TAKE NOTICE** that Timothy W. Hoffman ("Trustee"), the duly appointed, qualified and acting chapter 11 trustee of the bankruptcy estates ("Estates") of SVC and SVP (together, "Debtors"), intends to apply for an order authorizing the Trustee to compromise the Estates' controversies with Angelica de Vere, Theresa Sullivan, Sonyia Grabski, Elizabeth Matulich, Trinity Scott, Stephen A. Finn and Winery Rehabilitation, LLC (collectively, the "Settling Creditors"). This notice summarizes the disputes, the terms of the proposed compromise, and the procedure for objection, if any.

On February 1 and 2, 2017, SVC and SVP, respectively, filed voluntary petitions for relief in the United States Bankruptcy Court for the Northern District of California, Santa Rosa Division ("Bankruptcy Court") under the provisions of chapter 11 of the Bankruptcy Code, Case Nos. 17-10065 RLE and 17-10067 RLE ("Bankruptcy Cases"). The Debtors, which operated a winery in Rutherford, California, administered the Estates as debtors in possession until the Trustee was appointed on August 29, 2017.

In early 2018, the Trustee, with Bankruptcy Court's approval, sold the winery to Vite USA, Inc. for a confidential sale price. After payment of secured claims and other costs associated with the sale, the Trustee is holding net proceeds for the benefit of the Estates.

1 Five former employees of SVC have filed proofs of claim totaling \$9,055,560: Angelica de  
2 Vere (\$3,822,060), Theresa Sullivan (\$1,717,000), Sonyia Grabski (\$2,019,500), Elizabeth  
3 Matulich (\$1,012,000), and Trinity Scott (\$485,000) (collectively, the “Former Employees” or  
4 “Former Employee Claims” as applicable). The Former Employee Claims are tied to the claims  
5 these individuals are asserting in the Napa County Action (as defined and discussed below).

6 In addition, Stephen A. Finn and his company Winery Rehabilitation LLC (together, the  
7 “Finn Parties”) assert claims against the Estates for indemnification of attorneys’ fees and expenses  
8 (in the amounts of \$516,097.44 and \$247,970.82, respectively) and other unliquidated amounts that  
9 have been or may be incurred in both the District Court Action (as defined below) and the  
10 Bankruptcy Cases (together, the “Finn Claims”). The Finn Claims are predicated upon the terms  
11 of (i) certain prepetition loan documents entered into with the Debtors, (ii) the terms of SVC’s  
12 bylaws, (iii) an indemnification agreement entered into between Finn and SVC, (iv) applicable  
13 California state law, and (v) *Siegel v. Federal Home Loan Mortgage Corp.*, 143 F.3d 525 (9th Cir.  
14 1998).

15 In addition to the Former Employee Claims and the Finn Claims, there are three pending  
16 lawsuits involving most of the Settling Creditors. The first is an adversary proceeding the Debtors  
17 filed against Finn and Angelica de Vere (“de Vere”) prior to the Trustee’s appointment, entitled  
18 SVC v. Finn, A.P. No. 17-01023 (the “Adversary Proceeding”). The Adversary Proceeding has  
19 been reassigned to the U.S. District Court for the Northern District of California for consideration  
20 together with the second pending lawsuit, Sullivan v. Finn, Case No. 3:17-cv-05799-WHO  
21 (“District Court Action”). The District Court Action was commenced against Finn and another of  
22 his companies, Trust Company of America, Inc., by Kelleen and Ross Sullivan (together, the  
23 “Sullivans”), two members of the Sullivan Family that formerly owned the winery. Broadly  
24 speaking, the Estates in the Adversary Proceeding and the Sullivans in the District Court Action  
25 assert claims against the respective defendants for alleged breaches of their fiduciary duties while  
26 Finn was a partner of SVP and a controlling shareholder of SVC, and de Vere was an officer of  
27 SVC.

28 The Former Employees filed the third pending lawsuit against the Sullivans and SVC  
prepetition, in Napa County Superior Court, Case No. 26-67976 (“Napa County Action”), asserting  
a variety of claims, including labor code violations, wrongful termination, and breach of contract.  
The Estates filed a cross-complaint against de Vere in the Napa County Action which mirrors the  
allegations made in the Adversary Proceeding. With Bankruptcy Court approval, the Trustee has  
hired state court counsel to defend SVC, and prosecute counter-claims in the Napa County Action.  
In addition, insurance defense counsel is representing the Estates.

Over a period of several months, with the assistance of the Bankruptcy Court and a  
bankruptcy judge who volunteered his time to serve as mediator, and, separately, through mediation  
at JAMS, the Trustee worked very hard to try to bring all parties to the table and reach a global  
resolution of all claims, including any non-derivative claims the Sullivans assert against Finn.  
During that time, the Trustee kept the Court and parties apprised of his efforts to broker a global  
settlement. Unfortunately, a global settlement is not possible at this time. Thus, the Trustee has  
negotiated a compromise involving all principal parties in the Bankruptcy Cases save for the  
Sullivans.

1 The terms of the compromise are described below. However, for sake of clarity and  
2 avoidance of doubt, the proposed compromise does not resolve claims between the Finn Parties  
3 and the Sullivans. The terms of the compromise are as follows:

4 Upon entry of a final order approving this compromise, the Former Employee Claims will  
5 be withdrawn with prejudice. The Napa County Action (including the Estates' Cross-Complaint  
6 against de Vere) will be dismissed with prejudice. All of the Parties to the Napa County Action  
7 will execute a release of any and all claims against each other, including a waiver of § 1542 of the  
8 California Civil Code, and will bear their own attorneys' fees and costs.

9 Moreover, the Finn Claims will be subordinated to all trade debt claims reflected in the  
10 Debtors' schedules and proofs of claim currently on file in the Bankruptcy Cases, to the extent such  
11 claims are allowed. Finn will undertake full responsibility to completely resolve the Former  
12 Employee Claims without increasing the Finn Claims, *i.e.*, Finn will not seek indemnification from  
13 the Estates for sums paid to resolve the Former Employee Claims, or expenses incurred in resolving  
14 these claims. However, the Finn Claims are not being liquidated or otherwise resolved and settled  
15 as part of this compromise.

16 The Trustee, on behalf of the Estates, will dismiss all of the Estates' claims against the Finn  
17 Parties and de Vere in the District Court Action with prejudice. The Estates will execute a release  
18 of any and all claims against the Finn Parties, including a waiver of § 1542 of the California Civil  
19 Code. However, the Sullivans' claims against Finn and Trust Company of American, Inc. in the  
20 District Court Action will not be dismissed and are not being released as part of this compromise.

21 The Trustee believes this compromise is in the best interest of creditors and the Estates. In  
22 making this determination, the Trustee took into account (1) the probability of success in the  
23 litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the  
24 complexity of the litigation involved, and the expense, inconvenience and delay necessarily  
25 attending it; and (4) the paramount interest of creditors (collectively, the "A&C Factors"). In re  
26 A&C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986).

27 Probability of Success. This factor supports the proposed compromise. As an initial matter,  
28 the Trustee believes the Estates are solvent. In other words, funds in the Estates should be sufficient  
to pay all claims in full. The Settling Creditors' claims and defenses, and those held by the Estates,  
if litigated to conclusion are hard to quantify and predict. There is great uncertainty as to the  
ultimate outcomes. The Court is well familiar with the docket, but among other things, the Former  
Employee Claims have been amended from time-to-time, their former counsel has been disqualified  
by Order of the Court, and the same claims asserted in the Bankruptcy Cases are heading to trial in  
the Napa County Action. Meanwhile, in the Adversary Proceeding and District Court Action, the  
Estates will be forced to continue incurring expenses prosecuting their claims against Finn and de  
Vere. If Finn were ultimately to prevail in the District Court Action and obtain a defense verdict,  
he would assert his alleged entitlement to indemnification for his accruing attorneys' fees and costs,  
which would inflate his claim substantially higher than it is now. In short, there are unforeseeable  
twists and turns in these disputes, and the Trustee cannot realistically advise the Court that the  
Estates' success is probable, much less predictable.

1        Difficulties in Collection. The difficulty in ultimately collecting against Finn is uncertain  
2 in one respect. While the Trustee believes that Finn can respond, in funds, to any judgment, the  
3 Trustee is absolutely certain that Finn will exhaust any and all available appeals, motions for  
4 reconsideration and the like in the event the District Court rules against Finn. This will drive up  
5 fees substantially. The Estates' ability to collect on a potential judgment against de Vere is  
6 unknown. With respect to the Former Employee claims, this factor is neutral because the Estates  
7 are not asserting claims against the Former Employees. Rather, if this compromise is approved,  
8 there will be over \$9 million in unsecured claims withdrawn from the Estates.

9        Complexity, Delay and Expense of Litigation. This factor strongly supports the proposed  
10 compromise. At present, absent a compromise, the Napa County Action will continue to proceed  
11 to trial, judgment, and any appeals that follow. The District Court Action will proceed on a similar  
12 track. Given the history between the Settling Creditors and the Sullivans, the Trustee believes it  
13 will take many years to fully and finally resolve these disputes, all at great cost and significant  
14 delay to the Estates. Moreover, in the Napa County Action, coverage counsel may discontinue its  
15 defense on behalf of the Estates.

16        Paramount Interest of Creditors. This factor also strongly supports the proposed  
17 compromise. When approved by this Bankruptcy Court, the compromise will result in the  
18 withdrawal of over \$9 million of unsecured claims in the Bankruptcy Cases. It will also resolve  
19 the Napa County Action and Adversary Proceeding in full, while resolving all the Estates' claims  
20 in the District Court Action. With these disputes fully and finally resolved, the Trustee will be in  
21 a position to either proceed with a structured dismissal, or, more likely, a simple Chapter 11 plan.  
22 In either instance, this compromise will benefit creditors in that the intractable disputes between  
23 the Estates and the Settling Creditors will be resolved, clearing the way for an orderly conclusion  
24 to these cases.

25        **PLEASE TAKE FURTHER NOTICE** that the Trustee intends to apply to the  
26 above-entitled Court for an order approving this compromise. Bankruptcy Local Rule 9014 of the  
27 United States Bankruptcy Court for the Northern District of California prescribes the procedures  
28 to be followed in the event that you have an objection to the compromise as proposed. To that  
29 end:

30        **Any objection to the requested relief, or a request for hearing on the matter, must be  
31 filed and served upon the initiating party within 21 days of mailing the notice;**

32        **Any objection or request for a hearing must be accompanied by any declarations or  
33 memoranda of law any requesting party wishes to present in support of its position;**

34        **If there is no timely objection to the requested relief or a request for hearing, the court  
35 may enter an order granting the relief by default.**

36        **In the event of a timely objection or request for hearing, the initiating party will give  
37 at least seven days written notice of the hearing to the objecting or requesting party, and to  
38 any trustee or committee appointed in the case.**



1 Any objections or requests for hearing should be filed with the United States Bankruptcy  
2 Court, 99 South "E" Street, Santa Rosa, California 95404. A copy of the objection should be  
3 served on the Office of the United States Trustee and counsel for the Trustee at the address shown  
4 below. The Office of the United States Trustee is located at 450 Golden Gate Avenue, 5<sup>th</sup> Floor,  
Suite #05-0153, San Francisco, California 94102. For further information regarding the foregoing,  
please contact counsel for the Trustee at the address shown below.

5 Dated: January 31, 2019

**DUANE MORRIS LLP**

7 By: /s/ Aron M. Oliner (152373)

8 ARON M. OLINER

**DUANE MORRIS LLP**

One Market Plaza

Spear Street Tower, Suite 2200

San Francisco, California 94105-1127

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Facsimile: (415) 957-3001

Email: roliner@duanemorris.com

Attorneys for Chapter 11 Trustee

TIMOTHY W. HOFFMAN

# EXHIBIT B

Aron M. Oliner (SBN: 152373)  
Geoffrey A. Heaton (SBN: 206990)  
**DUANE MORRIS LLP**  
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Spear Street Tower, Suite 2200  
San Francisco, CA 94105-1127  
Telephone: (415) 957-3000  
Facsimile: (415) 957-3001  
Email: gheaton@duanemorris.com

Counsel for Chapter 11 Trustee  
TIMOTHY W. HOFFMAN

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SANTA ROSA DIVISION**

In re  
SVC,

Debtor.

Case No. 17-10065 RLE  
(Jointly Administered)

Chapter 11

**APPLICATION FOR ORDER  
AUTHORIZING TRUSTEE TO ENTER  
INTO COMPROMISE WITH VARIOUS  
CREDITORS AND LITIGANTS**

Date: May 8, 2019  
Time: 2:00 p.m.  
Place: 1300 Clay Street, Room 201  
Oakland, CA 94612

Judge: The Hon. Roger L. Efremsky

In re  
SVP,

Debtor.

Timothy W. Hoffman ("Trustee"), the duly appointed, qualified and acting chapter 11 trustee of the bankruptcy estates ("Estates") of SVC and SVP (together, "Debtors") respectfully

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1 applies for entry of an order authorizing the Trustee to enter into a compromise with Angelica de  
2 Vere, Teresa Sullivan, Sonyia Grabski, Elizabeth Matulich, Trinity Scott, Stephen A. Finn and  
3 Winery Rehabilitation, LLC (collectively, the “Settling Creditors”), as follows:

4 1. On February 1 and 2, 2017, SVC and SVP, respectively, filed voluntary petitions  
5 for relief in the United States Bankruptcy Court for the Northern District of California, Santa  
6 Rosa Division (“Bankruptcy Court”) under the provisions of chapter 11 of the Bankruptcy Code,  
7 Case Nos. 17-10065 RLE and 17-10067 RLE (“Bankruptcy Cases”).

8 2. The Debtors, which operated a winery in Rutherford, California, administered the  
9 Estates as debtors in possession until the Trustee was appointed on August 29, 2017.

10 3. In early 2018, the Trustee, with Bankruptcy Court approval, sold the winery to  
11 Vite USA, Inc. for a confidential sale price. After payment of secured claims and other costs  
12 associated with the sale, the Trustee is holding net proceeds for the benefit of the Estates.

13 4. Five former employees of SVC have filed proofs of claim totaling \$9,055,560:  
14 Angelica de Vere (\$3,822,060), Theresa Sullivan (\$1,717,000), Sonyia Grabski (\$2,019,500),  
15 Elizabeth Matulich (\$1,012,000), and Trinity Scott (\$485,000) (collectively, the “Former  
16 Employees” or “Former Employee Claims” as applicable).

17 5. The Former Employee Claims are tied to the claims these individuals are asserting  
18 in the Napa County Action (as defined and discussed below).

19 6. In addition, Stephen A. Finn and his company Winery Rehabilitation LLC  
20 (together, the “Finn Parties”) assert claims against the Estates for indemnification of attorneys’  
21 fees and expenses (in the amounts of \$516,097.44 and \$247,970.82, respectively) and other  
22 unliquidated amounts that have been or may be incurred in both the District Court Action (as  
23 defined below) and the Bankruptcy Cases (together, the “Finn Claims”).  
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1           7.       The Finn Claims are predicated upon the terms of (i) certain prepetition loan  
2 documents entered into with the Debtors, (ii) the terms of SVC's bylaws, (iii) an indemnification  
3 agreement entered into between Finn and SVC, (iv) applicable California state law, and (v)  
4 *Siegel v. Federal Home Loan Mortgage Corp.*, 143 F.3d 525 (9th Cir. 1998).

5  
6           8.       In addition to the Former Employee Claims and the Finn Claims, there are three  
7 pending lawsuits involving most of the Settling Creditors.

8           9.       The first is an adversary proceeding the Debtors filed against Finn and Angelica  
9 de Vere ("de Vere") prior to the Trustee's appointment, entitled SVC v. Finn, A.P. No. 17-01023  
10 (the "Adversary Proceeding").

11           10.      The Adversary Proceeding has been reassigned to the U.S. District Court for the  
12 Northern District of California for consideration together with the second pending lawsuit,  
13 Sullivan v. Finn, Case No. 3:17-cv-05799-WHO ("District Court Action").

14  
15           11.      The District Court Action was commenced against Finn and another of his  
16 companies, Trust Company of America, Inc., by Kelleen and Ross Sullivan (together, the  
17 "Sullivans"), two members of the Sullivan Family that formerly owned the winery.

18           12.      Broadly speaking, the Estates in the Adversary Proceeding and the Sullivans in  
19 the District Court Action assert claims against the respective defendants for alleged breaches of  
20 their fiduciary duties while Finn was a partner of SVP and a controlling shareholder of SVC, and  
21 de Vere was an officer of SVC.

22  
23           13.      The Former Employees filed the third pending lawsuit against the Sullivans and  
24 SVC prepetition, in Napa County Superior Court, Case No. 26-67976 ("Napa County Action"),  
25 asserting a variety of claims, including labor code violations, wrongful termination, and breach  
26 of contract. SVC filed a cross-complaint against de Vere in the Napa County Action which  
27 mirrors the allegations made in the Adversary Proceeding.  
28

1           14. With Bankruptcy Court approval, the Trustee hired state court counsel to defend  
2 SVC and prosecute counter-claims in the Napa County Action. In addition, insurance defense  
3 counsel is representing the Estates.

4           15. Over a period of several months, with the assistance of the Bankruptcy Court and  
5 a bankruptcy judge who volunteered his time to serve as mediator, and, separately, through  
6 mediation at JAMS, the Trustee worked very hard to try to bring all parties to the table and reach  
7 a global resolution of all claims, including any non-derivative claims the Sullivans assert against  
8 Finn. During that time, the Trustee kept the Court and parties apprised of his efforts to broker a  
9 global settlement.  
10

11           16. Unfortunately, a global settlement is not possible at this time. Thus, the Trustee  
12 has negotiated a compromise involving all principal parties in the Bankruptcy Cases save for the  
13 Sullivans.  
14

15           17. The terms of the compromise are described below. However, for sake of clarity  
16 and avoidance of doubt, the proposed compromise does not resolve claims between the Finn  
17 Parties and the Sullivans. The terms of the compromise are as follows:

- 18           • Upon entry of a final order approving this compromise, the Former Employee  
19 Claims will be withdrawn with prejudice. The Napa County Action (including  
20 the Estates' Cross-Complaint against de Vere) will be dismissed with prejudice.<sup>1</sup>  
21 The Estates and Former Employees will execute a release of any and all claims  
22 against each other, including a waiver of § 1542 of the California Civil Code, and  
23 will bear their own attorneys' fees and costs.  
24
- 25           • The Finn Claims will be subordinated to all trade debt claims reflected in the  
26 Debtors' schedules and proofs of claim currently on file in the Bankruptcy Cases,  
27

28 <sup>1</sup> The Former Employees' claims against the Sullivans will be dismissed without prejudice.

1 to the extent such claims are allowed. Finn will undertake full responsibility to  
2 completely resolve the Former Employee Claims without increasing the Finn  
3 Claims, *i.e.*, Finn will not seek indemnification from the Estates for sums paid to  
4 resolve the Former Employee Claims, or expenses incurred in resolving these  
5 claims. However, the Finn Claims will not be subordinated to a scheduled  
6 intercompany receivable owed by SVC to SVP in the mount of \$1,046,826, and  
7 will not be liquidated or otherwise resolved and settled as part of this  
8 compromise.

- 9  
10 • The Trustee, on behalf of the Estates, will dismiss all of the Estates' claims  
11 against the Finn Parties and de Vere in the Adversary Proceeding (now pending  
12 before the District Court) with prejudice. The Estates will execute a release of  
13 any and all claims against the Finn Parties, including a waiver of § 1542 of the  
14 California Civil Code. However, the Sullivans' claims against Finn and Trust  
15 Company of American, Inc. in the District Court Action will not be dismissed and  
16 are not being released as part of this compromise.

17  
18 18. The Trustee believes that this settlement is in the best interest of creditors and the  
19 Estate. In making this determination, the Trustee took into account (1) the probability of success  
20 in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the  
21 complexity of the litigation involved, and the expense, inconvenience and delay necessarily  
22 attending it; and (4) the paramount interest of creditors. In re A&C Properties, 784 F.2d 1377,  
23 1381 (9<sup>th</sup> Cir. 1986).

24  
25 19. Probability of Success. This factor supports the proposed compromise. As an  
26 initial matter, the Trustee believes the Estates are solvent. In other words, funds in the Estates  
27 should be sufficient to pay all claims in full. The Settling Creditors' claims and defenses, and  
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1 those held by the Estates, if litigated to conclusion are hard to quantify and predict. There is  
2 great uncertainty as to the ultimate outcomes. The Court is well familiar with the docket, but  
3 among other things, the Former Employee Claims have been amended from time-to-time, their  
4 former counsel has been disqualified by Order of the Court, and the same claims asserted in the  
5 Bankruptcy Cases are heading to trial in the Napa County Action. Meanwhile, in the Adversary  
6 Proceeding, the Estates will be forced to continue incurring expenses prosecuting their claims  
7 against Finn and de Vere. If Finn were ultimately to prevail in the District Court Action and  
8 obtain a defense verdict, he would assert his alleged entitlement to indemnification for his  
9 accruing attorneys' fees and costs, which would inflate his claim substantially higher than it is  
10 now. In short, there are unforeseeable twists and turns in these disputes, and the Trustee cannot  
11 realistically advise the Court that the Estates' success is probable, much less predictable.  
12

13  
14 20. Difficulties in Collection. The difficulty in ultimately collecting against Finn is  
15 uncertain in one respect. While the Trustee believes that Finn can respond, in funds, to any  
16 judgment, the Trustee is absolutely certain that Finn will exhaust any and all available appeals,  
17 motions for reconsideration and the like in the event the District Court rules against Finn. This  
18 will drive up fees substantially. The Estates' ability to collect on a potential judgment against de  
19 Vere is unknown. With respect to the Former Employee claims, this factor is neutral because the  
20 Estates are not asserting claims against the Former Employees. Rather, if this compromise is  
21 approved, there will be over \$9 million in unsecured claims withdrawn from the Estates.  
22

23 21. Complexity, Delay and Expense of Litigation. This factor strongly supports the  
24 proposed compromise. At present, absent a compromise, the Napa County Action will continue  
25 to proceed to trial, judgment, and any appeals that follow. The District Court Action will  
26 proceed on a similar track. Given the history between the Settling Creditors and the Sullivans,  
27 the Trustee believes it will take many years to fully and finally resolve these disputes, all at great  
28



1 cost and significant delay to the Estates. Moreover, in the Napa County Action, coverage  
2 counsel may discontinue its defense on behalf of the Estates.

3 22. Paramount Interest of Creditors. This factor also strongly supports the proposed  
4 compromise. When approved by this Bankruptcy Court, the compromise will result in the  
5 withdrawal of over \$9 million of unsecured claims in the Bankruptcy Cases. It will also resolve  
6 the Napa County Action and Adversary Proceeding in full. With these disputes fully and finally  
7 resolved, the Trustee will be in a position to either proceed with a structured dismissal, or, more  
8 likely, a simple Chapter 11 plan. In either instance, this compromise will benefit creditors in that  
9 the intractable disputes between the Estates and the Settling Creditors will be resolved, clearing  
10 the way for an orderly conclusion to these cases.  
11

12 23. On January 31, 2019, the Trustee caused his Notice of Trustee's Intention to  
13 Compromise Controversy with Various Creditors and Litigants; Opportunity for Hearing (the  
14 "Notice") to be served upon the Debtors and all creditors and parties in interest in this case. A  
15 true and correct copy of the Notice, together with certificate of service and confirmation of  
16 electronic filing, is attached to the Declaration of Aron M. Oliner ("Oliner Declaration")  
17 submitted herewith.  
18

19 24. Pursuant to the terms of the Notice and Bankruptcy Local Rule 9014-1(b), the last  
20 date to object and/or request a hearing with respect to the matters contained therein was February  
21 21, 2019.  
22

23 25. Before this deadline expired, the Sullivans' counsel requested an extension to  
24 object to the Notice. The Trustee consented to extend the Sullivans' objection deadline through  
25 March 13, 2019.  
26

27 ///

28 ///

Sullivans' Response to the Notice

26. On March 13, 2019, the Sullivans filed a response to the Notice [Docket No. 417] ("Response"). An unexecuted copy of the parties' settlement agreement ("Settlement Agreement"), which Trustee's counsel provided to the Sullivans' counsel, is attached to the Response.

27. The Response raises three points, and requests that the proposed compromise be set for hearing.

28. First, the Response contends, or at least suggests, that the compromise should not be approved because the Former Employees are not releasing claims against the Sullivans. The Sullivans, who are not parties to the Settlement Agreement, indeed are not receiving any releases under the Settlement Agreement. There is nothing objectionable about that, and, contrary to footnote 2 in the Response, approval of the compromise should not be made contingent upon the Former Employees and Sullivans entering into a side agreement to release claims against one another. Any settlement between the Former Employees and Sullivans is between them and does not involve the Estates.

29. Second, the Response questions whether, under the terms of the Settlement Agreement, the Buchalter law firm ("Buchalter") will receive a release from the Estates. Buchalter previously represented the Debtors, and, by order of this Court, was disqualified from representing the Former Employees in the Bankruptcy Cases due to the conflict of interest. It is not the Trustee's intention to release any claims against Buchalter. In order to resolve any ambiguity, the Trustee proposes that the order approving this compromise clarify that Buchalter and its attorneys will not receive a release of claims from the Estates. The Trustee does not believe that either Finn or the Former Employees will object to inclusion of this language in the order.

1           30. Third, the Response questions whether, under the Settlement Agreement, the Finn  
2 Claims are being liquidated or are otherwise immune from challenge. The Settlement  
3 Agreement, however, makes clear that the Finn Claims are not being liquidated or otherwise  
4 resolved under the Settlement Agreement, and that the settling parties reserve all rights vis-à-vis  
5 the Finn Claims. See Settlement Agreement at ¶ 2.

7                           Areas of Dispute over Form of Order Approving Compromise

8           31. Both Finn’s counsel and the Sullivans’ counsel requested to review and comment  
9 on the proposed order approving the compromise. Trustee’s counsel forwarded the proposed  
10 order to both counsel, and spent considerable time attempting to come up with language in the  
11 order that was mutually agreeable to both. Unfortunately, despite Trustee’s counsel’s efforts,  
12 this was not possible. Accordingly, the Trustee has set the matter for hearing.

13           32. The areas of dispute over the form of order appear involve two areas: (i)  
14 preservation of rights to challenge the Finn Claims, and (ii) the potential release of the Sullivans’  
15 claims against Finn (as opposed to the Estates’ claims against Finn).  
16

17           33. With respect to the first area of dispute, as discussed, paragraph 2 of the  
18 Settlement Agreement states unambiguously that the Finn Claims are not “being liquidated or  
19 otherwise resolved” by the Settlement Agreement, and that the settling parties “reserve all rights”  
20 as to the Finn Claims. The Trustee does not believe that any further clarification in the order is  
21 required.  
22

23           34. As to the second area of dispute, paragraph 8(b) of the Settlement Agreement  
24 makes clear that the Estates are only releasing claims held by the Estates, and are not releasing  
25 claims held directly and exclusively by the Sullivans. Simply put, the Trustee is releasing the  
26 Estates’ claims against the Finn Parties and Former Employees, nothing more or less. The  
27 language in the Settlement Agreement makes that clear. The Trustee is not releasing any claims  
28

1 that are not property of the Estates. Indeed, the Trustee does he have the ability to release claims  
2 that are not estate property.

3 35. Other than as discussed above, neither the Trustee nor his counsel of record,  
4 Duane Morris LLP, have received notice of any objection to the compromise as proposed, or any  
5 request for hearing, and more than twenty-one days have elapsed since the Notice was served.  
6

7 36. With respect to the withdrawal with prejudice of the Former Employees' claims,  
8 paragraph of 1 of the Settlement Agreement (Exhibit A to the Oliner Declaration) provides:  
9 "Withdrawal of Former Employee Claims. Claim Nos. 5, 6, 7, 8, 9 and 17 (collectively, the  
10 'Former Employee Claims') filed by the Former Employees shall be withdrawn with prejudice.  
11 The Bankruptcy Court's order approving this settlement may provide for withdrawal of the  
12 Former Employee Claims with prejudice."  
13

14 37. Accordingly, the proposed order submitted for approval of this compromise will  
15 provide for the withdrawal with prejudice of Claim Nos. 5, 6, 7, 8, 9 and 17 in SVC's claims  
16 register, as set forth above and in the Settlement Agreement. It does not appear that Finn or the  
17 Settling Creditors object to these provisions in the form of order.

18 **WHEREFORE**, the Trustee respectfully requests that this Court enter an order  
19 authorizing the Trustee to enter into the compromise described hereinabove.  
20

21 Dated: April 3, 2019

**DUANE MORRIS LLP**

By: /s/ Aron M. Oliner (#152373)

ARON M. OLINER

Attorneys for Chapter 11 Trustee

TIMOTHY W. HOFFMAN

# EXHIBIT C

Aron M. Oliner (SBN: 152373)  
Geoffrey A. Heaton (SBN: 206990)  
**DUANE MORRIS LLP**  
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Counsel for Chapter 11 Trustee  
TIMOTHY W. HOFFMAN

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SANTA ROSA DIVISION**

In re

SVC,

Debtor.

Case No. 17-10065 RLE

(Jointly Administered)

Chapter 11

**DECLARATION OF ARON M. OLINER  
IN SUPPORT OF APPLICATION FOR  
ORDER AUTHORIZING TRUSTEE TO  
ENTER INTO COMPROMISE WITH  
VARIOUS CREDITORS AND  
LITIGANTS**

Date: May 8, 2019

Time: 2:00 p.m.

Place: 1300 Clay Street, Room 201  
Oakland, CA 94612

Judge: The Hon. Roger L. Efremsky

In re

SVP,

Debtor.

1 I, Aron M. Oliner, declare:

2 1. I am an attorney at law duly licensed to practice before this Court, and am a  
3 partner in the law firm of Duane Morris LLP, counsel to Timothy W. Hoffman (“Trustee”), the  
4 duly appointed, qualified and acting chapter 7 trustee of the bankruptcy estates (“Estates”) of  
5 SVC and SVP (together, “Debtors”). The matters stated below are made and based upon my  
6 personal knowledge, except for those matters stated upon information and belief, and as to those  
7 matters I believe them to be true. If called as a witness, I could and would competently testify to  
8 the matters set forth below.  
9

10 2. I submit this declaration in support of the Application for Entry of Order  
11 Authorizing Trustee to Enter into Compromise with Various Creditors and Litigants  
12 (“Application”), filed herewith.  
13

14 3. I am familiar with the compromise described herein and the underlying facts  
15 related to the same.

16 4. On February 1 and 2, 2017, SVC and SVP, respectively, filed voluntary petitions  
17 for relief in the United States Bankruptcy Court for the Northern District of California, Santa  
18 Rosa Division (“Bankruptcy Court”) under the provisions of chapter 11 of the Bankruptcy Code,  
19 Case Nos. 17-10065 RLE and 17-10067 RLE (“Bankruptcy Cases”).  
20

21 5. The Debtors, which operated a winery in Rutherford, California, administered the  
22 Estates as debtors in possession until the Trustee was appointed on August 29, 2017.

23 6. In early 2018, the Trustee, with Bankruptcy Court’s approval, sold the winery to  
24 Vite USA, Inc. for a confidential sale price. After payment of secured claims and other costs  
25 associated with the sale, the Trustee is holding net proceeds for the benefit of the Estates.  
26

27 7. Five former employees of SVC have filed proofs of claim totaling \$9,055,560:  
28 Angelica de Vere (\$3,822,060), Theresa Sullivan (\$1,717,000), Sonyia Grabski (\$2,019,500),  
29

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1 Elizabeth Matulich (\$1,012,000), and Trinity Scott (\$485,000) (collectively, the “Former  
2 Employees” or “Former Employee Claims” as applicable).

3 8. The Former Employee Claims are tied to the claims these individuals are asserting  
4 in the Napa County Action (as defined and discussed below).

5 9. In addition, Stephen A. Finn and his company Winery Rehabilitation LLC  
6 (together, the “Finn Parties”) assert claims against the Estates for indemnification of attorneys’  
7 fees and expenses (in the amounts of \$516,097.44 and \$247,970.82, respectively) and other  
8 unliquidated amounts that have been or may be incurred in both the District Court Action (as  
9 defined below) and the Bankruptcy Cases (together, the “Finn Claims”).

10 10. In addition to the Former Employee Claims and the Finn Claims, there are three  
11 pending lawsuits involving most of the Settling Creditors.

12 11. The first is an adversary proceeding the Debtors filed against Finn and Angelica  
13 de Vere (“de Vere”) prior to the Trustee’s appointment, entitled SVC v. Finn, A.P. No. 17-01023  
14 (the “Adversary Proceeding”).

15 12. The Adversary Proceeding has been reassigned to the U.S. District Court for the  
16 Northern District of California for consideration together with the second pending lawsuit,  
17 Sullivan v. Finn, Case No. 3:17-cv-05799-WHO (“District Court Action”).

18 13. The District Court Action was commenced against Finn and another of his  
19 companies, Trust Company of America, Inc., by Kelleen and Ross Sullivan (together, the  
20 “Sullivans”), two members of the Sullivan Family that formerly owned the winery.

21 14. Broadly speaking, the Estates in the Adversary Proceeding and the Sullivans in  
22 the District Court Action assert claims against the respective defendants for alleged breaches of  
23 their fiduciary duties while Finn was a partner of SVP and a controlling shareholder of SVC, and  
24 de Vere was an officer of SVC.



1           15.     The Former Employees filed the third pending lawsuit against the Sullivans and  
2     SVC prepetition, in Napa County Superior Court, Case No. 26-67976 (“Napa County Action”),  
3     asserting a variety of claims, including labor code violations, wrongful termination, and breach  
4     of contract. The Estates filed a cross-complaint against de Vere in the Napa County Action  
5     which mirrors the allegations made in the Adversary Proceeding.  
6

7           16.     With Bankruptcy Court approval, the Trustee has hired state court counsel to  
8     defend SVC, and prosecute counter-claims in the Napa County Action. In addition, insurance  
9     defense counsel is representing the Estates.

10          17.     Over a period of several months, with the assistance of the Bankruptcy Court and  
11     a bankruptcy judge who volunteered his time to serve as mediator, and, separately, through  
12     mediation at JAMS, the Trustee, with assistance from his counsel, worked very hard to try to  
13     bring all parties to the table and reach a global resolution of all claims, including any non-  
14     derivative claims the Sullivans assert against Finn. During that time, the Trustee kept the Court  
15     and parties apprised of his efforts to broker a global settlement.  
16

17          18.     While a global settlement is not possible at this time, the Trustee has negotiated a  
18     compromise involving all principal parties in the Bankruptcy Cases save for the Sullivans.

19          19.     The terms of the compromise are described below. The proposed compromise  
20     does not resolve claims between the Finn Parties and the Sullivans. The terms of the  
21     compromise are as follows:  
22

- 23                 • Upon entry of a final order approving this compromise, the Former Employee  
24                 Claims will be withdrawn with prejudice. The Napa County Action (including  
25                 the Estates’ Cross-Complaint against de Vere) will be dismissed with prejudice.  
26                 (The Former Employees’ claims against the Sullivans will be dismissed without  
27                 prejudice.) The Estates and Former Employees will execute a release of any and  
28

all claims against each other, including a waiver of § 1542 of the California Civil Code, and will bear their own attorneys' fees and costs.

- The Finn Claims will be subordinated to all trade debt claims reflected in the Debtors' schedules and proofs of claim currently on file in the Bankruptcy Cases, to the extent such claims are allowed. Finn will undertake full responsibility to completely resolve the Former Employee Claims without increasing the Finn Claims, *i.e.*, Finn will not seek indemnification from the Estates for sums paid to resolve the Former Employee Claims, or expenses incurred in resolving these claims. However, the Finn Claims are not being subordinated to a scheduled intercompany receivable owed by SVC to SVP in the mount of \$1,046,826, and are not being liquidated or otherwise resolved and settled as part of this compromise.
- The Trustee, on behalf of the Estates, will dismiss all of the Estates' claims against the Finn Parties and de Vere in the Adversary Proceeding (now pending before the District Court) with prejudice. The Estates will execute a release of any and all claims against the Finn Parties, including a waiver of § 1542 of the California Civil Code. However, the Sullivans' claims against Finn and Trust Company of American, Inc. in the District Court Action will not be dismissed and are not being released as part of this compromise.

20. For reasons set forth in the Application, I believe, as does the Trustee, that the proposed compromise is in the best interest of creditors and the Estate.

21. Attached hereto as **Exhibit "A"** is a true and correct copy of the Settlement Agreement entered into among the parties. The agreement is expressly subject to Bankruptcy Court approval.

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1           22.     On January 31, 2019, my office caused a Notice of Trustee's Intention to  
2     Compromise Controversy with Various Creditors and Litigants (the "Notice") to be served upon  
3     the Debtors, all creditors and parties in interest. A true and correct copy of the Notice, together  
4     with certificate of service and confirmation of electronic filing, is attached hereto as  
5     **Exhibit "B."**

6  
7           23.     Pursuant to Bankruptcy Local Rule 9014, the last day for any party to object to  
8     the compromise as set forth in the Notice, or request a hearing thereon, was February 21, 2019.

9           24.     Prior to the objection deadline, the Sullivans' counsel requested an extension of  
10    time to object to the Notice. The Sullivans' counsel, Mr. John Fiero, requested that he be  
11    provided an opportunity to review the proposed settlement, and accorded modest additional  
12    period of time to file a response. This was, to my mind, a reasonable request given the myriad  
13    issues involved in the proposed settlement. The Trustee consented to extend the Sullivans'  
14    objection deadline through March 13, 2019.

15  
16           25.     On March 13, 2019, the Sullivans filed a response to the Notice [Docket No. 417]  
17    ("Response"). An unexecuted copy of the parties' settlement agreement ("Settlement  
18    Agreement"), which I provided to the Sullivans' counsel, is attached to the Response.

19           26.     The Response raises three principal points, and requests that the matter be set for  
20    hearing.

21  
22           27.     On behalf of the Trustee, I attempted to resolve the matter without a hearing.

23           28.     Both Finn's counsel and the Sullivans' counsel requested to review and comment  
24    on the proposed order approving the compromise. I forward the proposed order to both counsel,  
25    and spent considerable time communicating with counsel in an effort to come up with language  
26    in the order that was mutually agreeable to both. Unfortunately, this was not possible.  
27    Accordingly, I caused this matter to be set for hearing.

29. The areas of dispute over the form of order appear involve two areas: (i) preservation of rights to challenge the Finn Claims, and (ii) the potential release of the Sullivans' claims against Finn (as opposed to the Estates' claims against Finn).

30. As of the date of this declaration, except as described above, I am informed and believe that my office has not received any objection to the proposed compromise, nor have I been served with any request for hearing.

31. I would like the Court to note also, that while there are a number of earlier available dates on this Court's law and motion calendar, in deference to Mr. Philip Warden, counsel to Finn, I have set this hearing for May 8, 2019, at his specific request.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 3, 2019, at San Francisco, California.

/s/ Aron M. Oliner (152373)  
ARON M. OLINER

# EXHIBIT A

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and among Angelica de Vere, Teresa Sullivan, Sonyia Grabski, Elizabeth Matulich, Trinity Scott, Stephen A. Finn, Winery Rehabilitation, LLC and Timothy W. Hoffman (“Trustee”), chapter 11 trustee of the bankruptcy estates (“Estates”) of SVC and SVP (together, “Debtors”).

### RECITALS

A. On December 31, 2015, Angelica de Vere (“de Vere”), Teresa Sullivan (“Teresa”), Sonyia Grabski (“Grabski”), Elizabeth Matulich (“Matulich”) and Trinity Scott (“Scott”) (collectively, the “Former Employees”) filed a complaint in Napa County Superior Court against SVC, Kelleen Sullivan and Ross Sullivan, asserting claims for, inter alia, wrongful termination, breach of contract, slander and civil assault, Case No. 26-67976 (“Napa County Action”).

B. On January 12, 2017, SVC filed a cross-complaint (“Napa County Cross-Complaint”) against de Vere in the Napa County Action.

C. On February 1 and 2, 2017, SVC and SVP, respectively, filed voluntary petitions for relief in the United States Bankruptcy Court for the Northern District of California, Santa Rosa Division (“Bankruptcy Court”) under the provisions of chapter 11 of the Bankruptcy Code, Case Nos. 17-10065 RLE and 17-10067 RLE (“Bankruptcy Cases”).

D. On February 15, 2017, SVC filed its bankruptcy schedules [Docket No. 25], wherein it scheduled SVP as holding a general unsecured claim in the amount of \$2,130,720.00 based upon a trade payable (the “SVP Intercompany Claim”).

E. On March 1, 2017, de Vere filed a general unsecured proof of claim in SVC’s case in the amount of \$1,046,826.00, assigned Claim No. 5 in SVC’s case. On March 7, 2018, de Vere filed an amendment to Claim 5 in the amount of \$3,822,060.00, assigned Claim No. 17 in SVC’s case.

F. On March 1, 2017, Teresa filed a general unsecured proof of claim in SVC’s case in the amount of \$185,769.00, assigned Claim No. 6. On March 9, 2018, Teresa amended Claim No. 6. As amended, Claim No. 6 is asserted in the amount of \$1,717,000.00.

G. On March 1, 2017, Grabski filed a general unsecured proof of claim in SVC’s case in the amount of \$429,134.00, assigned Claim No. 7. On March 15, 2018, Grabski amended Claim No. 7. As amended, Claim No. 7 is asserted in the amount of \$2,019,500.00.

H. On March 1, 2017, Matulich filed a general unsecured proof of claim in SVC’s case in the amount of \$305,000.00, assigned Claim No. 8. On March 16, 2018, Matulich amended Claim No. 8. As amended, Claim No. 8 is asserted in the amount of \$1,012,000.00.

I. On March 1, 2017, Scott filed a general unsecured proof of claim in SVC’s case in the amount of \$55,000.00, assigned Claim No. 9. On March 19, 2018, Scott amended Claim No. 9. As amended, Claim No. 9 is asserted in the amount of \$485,000.00.

J. On April 10, 2017, Winery Rehabilitation, LLC (“WR”) filed Claim Nos. 11 and 12 in SVC’s case against SVP and SVC, respectively, asserting secured claims in the amount of \$9,940,098.42.

K. On April 10, 2017, Finn filed Claim Nos. 13 and 14 in SVC’s case against SVP and SVC, respectively, asserting secured claims in the amount of \$4,656,692.36.

L. On July 14, 2017, the Debtors, as debtors-in-possession, filed an adversary proceeding against Stephen A. Finn (“Finn”) and de Vere, asserting claims for money damages and objection to the claims of Finn and de Vere, A.P. No. 17-01023 (“Adversary Proceeding”).

M. On August 29, 2017, the Trustee was appointed as chapter 11 trustee of the Estates, and succeeded to the Debtors as plaintiff in the Adversary Proceeding and cross-complainant in the Napa County Action.

N. On October 6, 2017, Kelleen Sullivan and Ross Sullivan, who are not parties to this Agreement, filed a complaint against Finn and Trust Company of America, Inc. in the United States District Court for the Northern District California, San Francisco Division (“District Court”), asserting claims for, *inter alia*, breach of fiduciary duty and unfair business practices, Case No. 3:17-cv-05799-WHO (“District Court Action”).

O. On December 11, 2017, as authorized by the *Order Authorizing Trustee to (1) Sell Real and Personal Property Assets of Debtors Free and Clear of Liens and Encumbrances Pursuant to 11 U.S.C. § 363(b) and (f), and (2) Assume and Assign Executory Contracts Pursuant to 11 U.S.C. § 365* [Docket No. 249], the Trustee paid distributions to Finn and WR on account of their secured claims, in the aggregate amount of \$17,798,383.20, from the proceeds of the sale of substantially all assets of the Debtors.

P. On March 6, 2018, Finn amended Claim Nos. 13 and 14 to assert further secured claims for attorneys’ fees in the amount of \$200,000.00. On September 11, 2018, Finn amended Claim Nos. 13 and 14 a second time to assert secured claims for attorneys’ fees in the amount of \$516,097.44 and to assert general unsecured claims for indemnification in an unliquidated amount.

Q. On September 11, 2018, WR amended Claim Nos. 11 and 12 to assert further secured claims for attorneys’ fees in the amount of \$247,970.82.

R. In November of 2018, the Adversary Proceeding was transferred to the District Court for consideration with the District Court Action. The Adversary Proceeding is currently pending as Case No. 3:18-cv-07088-WHO.

S. Finn, WR and the Former Employees (collectively, the “Settling Creditors”) and the Trustee have engaged in settlement discussions concerning the matters set forth above.

T. Finn has agreed to provide confidential consideration to the Former Employees to resolve the Former Employees’ claims.

U. The Former Employees are participating in this Agreement due to the economic benefit it provides in alleviating the need for further litigation.

**NOW THEREFORE**, in consideration of the foregoing, and intending to be bound as set forth herein, the Settling Creditors and the Trustee agree as follows:

### **AGREEMENT**

1. Withdrawal of Former Employee Claims. Claim Nos. 5, 6, 7, 8, 9 and 17 (collectively, the “Former Employee Claims”) filed by the Former Employees shall be withdrawn with prejudice. The Bankruptcy Court’s order approving this settlement requires withdrawal of the Former Employee Claims with prejudice.

2. Subordination of Finn Party Claims. Claim Nos. 11, 12, 13 and 14 (collectively, the “Finn Party Claims”) filed by WR and Finn shall be subordinated to all trade debt reflected in the Debtors’ schedules and proofs of claim currently on file in the Bankruptcy Cases, to the extent such trade debt claims are allowed; provided, however, that the Finn Party Claims shall not be subordinated to the SVP Intercompany Claim or any part thereof. For the avoidance of doubt, the amount of trade debt claims to which the Finn Party Claims shall be subordinated is anticipated to be approximately \$250,000 in the aggregate. The Bankruptcy Court’s order approving this settlement provides for subordination of the Finn Party Claims as set forth herein. Neither the Finn Party Claims nor the SVP Intercompany Claim are being liquidated or otherwise resolved by this Agreement. Except as set forth in this Agreement, the Parties reserve all rights as to the Finn Party Claims and the SVP Intercompany Claim.

3. Dismissal of Napa County Action. The Former Employees shall cause the claims against SVC in the Napa County Action to be dismissed with prejudice. The Trustee shall cause the Napa County Cross-Complaint to be dismissed with prejudice. The Former Employees’ claims against Kelleen Sullivan shall be dismissed without prejudice.

4. Dismissal of Adversary Proceeding. The Trustee shall cause the Adversary Proceeding to be dismissed with prejudice.

5. Waiver of Right to Amend Proofs of Claims to Include Any Consideration Finn Provides to Former Employees. Finn and WR (together, the “Finn Parties”) waive and release any rights to, and shall not, amend any of the Finn Party Claims to seek to recover any consideration provided to resolve the Former Employee Claims.

6. Costs and Expenses of Settlement. The Settling Creditors and the Trustee shall bear all their own costs, expenses and attorneys’ fees incurred in connection with the Napa County Action, Adversary Proceeding, District Court Action and the Bankruptcy Cases, and the negotiation, preparation and application for Bankruptcy Court approval of this Agreement.

7. Approval by Bankruptcy Court. The Trustee shall cause his attorneys to obtain all necessary orders of the Bankruptcy Court to approve this Agreement. If the Agreement is not approved by the Bankruptcy Court, it shall be of no force or effect.

8. Release of Claims.

(a) Except as expressly set forth herein, the Former Employees, for themselves and on behalf of any and all parties claiming by or through them, hereby forever release and discharge the Trustee, his agents, attorneys, successors, representatives and the Estates (together,



the "Trustee Released Parties") from any and all causes of action, actions, liabilities, demands, obligations, costs, expenses, or claims (hereinafter collectively "Claims") of any nature whatsoever, whether arising before or after the commencement of the Bankruptcy Cases, including, without limitation, any Claims that arise under the United States Bankruptcy Code, whether such Claims are known, unknown, suspected, unsuspected, fixed, contingent, liquidated, unliquidated, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, and which have existed at any time up until the date of this Agreement. For the avoidance of doubt, the Trustee Released Parties do not include Kelleen Sullivan or Ross Sullivan.

(b) Except as expressly set forth herein, the Trustee, on behalf of SVC and SVP and on behalf of himself, his agents, attorneys, successors, representatives, and any and all parties claiming by or through him or the Estates, including all officers, directors, shareholders, independent contractors, employees, subsidiaries, affiliates, partners, joint venturers, co-venturers, insurers, investors, licensees, and all persons acting by, through, under, or in concert with them, hereby forever releases and discharges the Settling Creditors, their agents, attorneys, successors, representatives, officers, directors, shareholders, independent contractors, employees, subsidiaries, affiliates, partners, joint venturers, co-venturers, insurers, investors, licensees, and all persons acting by, through, under, or in concert with them, from any and all causes of action, actions, liabilities, demands, obligations, costs, expenses, accounts, promises, indemnifications, losses or claims of any nature whatsoever, whether at law or in equity, arising before or after the commencement of the Bankruptcy Cases, including, without limitation, any Claims that arise under the United States Bankruptcy Code, and all Claims in the Napa County Cross Complaint, whether such Claims are known, unknown, suspected, unsuspected, fixed, contingent, liquidated, unliquidated, matured, unmatured, disputed, undisputed, legal, equitable, due or become due, secured, or unsecured, and which they now have or hold or which have existed at any time up until the date of this Agreement, and expressly including any Claims asserted in the Adversary Proceeding now pending in the District Court (Case No. 3:18-cv-07088-WHO), and any and all Claims which could have been brought by the Estates or Trustee, on a direct or derivative basis, in any court or through the pursuit of any administrative agency or governing body. For avoidance of doubt, the Trustee is providing the Settling Creditors with the broadest possible release he may provide on behalf of the Estates, and is releasing any and all Claims held by the Estates including any claims that could have been brought by the Estates including all derivative claims. See *Stein vs. United Artists* 691F.2<sup>nd</sup> 885 (9<sup>th</sup> Circuit 1982). The Trustee is not releasing any Claims held directly and exclusively by Ross Sullivan or Kelleen Sullivan as individuals, but the Trustee is releasing Claims of the Estate that could discharge derivative or indirect claims by Ross Sullivan or Kelleen Sullivan, including (without limitation) Claims by or through the Debtor, its Estates, or either of their agents. With respect to the matters released herein, the Former Employees and the Trustee acknowledge that they have each been advised to consult with legal counsel and are familiar with the provisions of California Civil Code Section 1542 and expressly waive any and all rights they each may have under § 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

This Agreement together with the releases herein contained, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors-in-

interest, partners, directors, officers, insurers, employees, predecessors and assignees of the respective parties.

9. Compromise of Disputed Claim. The Settling Creditors and the Trustee acknowledge that the execution of this Agreement and consummation of the transactions contemplated hereby do not constitute an admission of liability or of any facts by any of the parties hereto.

10. Representations and Warranties. The parties each further expressly warrant and represent to one another as follows:

- (a) They have read this Agreement and consulted with their respective attorneys concerning its contents and legal consequences;
- (b) They have investigated the facts to the extent that they have deemed necessary in their sole discretion and have assumed any risk of mistake of fact and any facts proven to be other than or different from the facts now known to any of the parties and therefore intend this Agreement to be binding without regard to any mistake of fact or law relating to the subject matter of this Agreement;
- (c) They have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to execute this Agreement and thus warrant that they are fully authorized to bind the party for which they execute this Agreement; and
- (d) There has been and will be no assignment or other transfer of any claim released, or any part thereof.

The foregoing warranties and representations shall survive the execution and delivery of this Agreement.

11. Integration. This Agreement contains the entire agreement between the Settling Creditors and the Trustee regarding its subject matter. This Agreement cannot be modified or amended, except in writing executed by the party to be charged. Except as expressly set forth herein, there have been no representations or promises made by any party and relied upon by the other in entering into this Agreement.

12. Execution of Documents.

(a) The parties agree to act in good faith and to cooperate fully with and amongst one other in carrying out the provisions of this Agreement, and for that purpose the parties hereto each agree to execute any further documents which may be necessary to effectuate the transactions contemplated by this Agreement.

(b) This Agreement may be executed in several counterparts and, as executed, shall constitute one agreement, binding on all parties who have executed a counterpart, notwithstanding that all parties are not signatories to the original or to the same counterparts. All parties signing this Agreement acknowledge and represent they have complete authority to execute this Agreement.

(c) This Agreement may be executed by telecopy or electronically submitted signatures. This Agreement shall be binding on all parties notwithstanding that all parties' telecopied or electronically submitted signature pages are not to the same counterparts.

13. Non-disparagement. The Trustee, Debtors and Settling Creditors each agree that they will not make any disparaging or negative statements, whether written or oral, or engage in any negative communication about one another, including, but not limited to any communications about work, professional conduct or business. Trustee and Debtors further agree they will not disparage Former Employees' job performance or otherwise take any action which could reasonably be expected to adversely affect Former Employees', and each of their, personal or professional reputation.

14. Construction/Severability. In the event of a suit or other legal proceeding arising out of this Agreement, any such action shall be brought in the Bankruptcy Court and the parties hereto shall submit to the jurisdiction of the Bankruptcy Court. If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement, but in no event shall such provision affect, impair or invalidate any other provision in this Agreement. Each party acknowledges that he/she/it has participated in the drafting of this Agreement and reviewed the terms of the Agreement and as such, no rule of construction shall apply in any interpretation of this Agreement which might result in this Agreement being construed in favor of or against any party, including without limitation, any rule of construction to the effect that ambiguities ought to be resolved against the drafting party.

15. Miscellaneous.

(a) Notwithstanding any provision contained in this Agreement to the contrary, in the event of a dispute relative to any provision in this Agreement, the prevailing party shall recover his/her/its reasonable attorneys' fees, costs and expenses incurred in enforcing this Agreement, in addition to any damages caused by such dispute.

(b) Each party hereto warrants that he/she/it has made no assignment, and will hereafter make no assignment, of any claim, chose in action, right of action or any other right of any kind which is the subject of this Agreement or which is released pursuant to this Agreement, and that no other person or entity has or had any interest of any kind in the Claims referred to above.

(c) As used in this Agreement, captions and paragraph headings are provided solely for convenience and shall not be deemed to restrict or limit the meaning of the text. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against any of the parties

16. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard for choice-of-law provisions, and shall be utilized in construing or interpreting this Agreement and in enforcing the rights and remedies of the parties.

17. Notice. Any notice required or permitted to be given pursuant to this Agreement shall be deemed effective upon personal delivery or within five days after deposit with the United

States Postal Service by certified mail, postage pre-paid, return receipt requested and addressed as follows, and to such other addresses as either party may designate in writing:

If to the Former Employees: Jonathan M. Cohen  
Joseph & Cohen  
Professional Corporation  
1855 Market Street  
San Francisco, CA 94103

If to the Finn Parties: Philip S. Warden  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22<sup>nd</sup> Floor  
San Francisco, CA 94111-5998

If to the Trustee: Aron M. Oliner  
Duane Morris LLP  
One Market Plaza, Spear Tower, Suite 2200  
San Francisco, CA 94105-1127

18. Terms Read and Understood. The undersigned hereby certify that they have read all of the foregoing Agreement, have conferred with counsel of their choosing pertaining to the same, fully understand all of the terms hereof, and have authority to enter into the foregoing Agreement. The parties acknowledge and represent that they enter into this Agreement and all of the contemplated documents of their own free will and not due to any representation, commitment, promise, pressure or duress from any other party.

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
ANGELICA DE VERE

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
TERESA SULLIVAN

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
SONYIA GRABSKI

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
ELIZABETH MATULICH

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
TRINITY SCOTT

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
STEPHEN A. FINN

WINERY REHABILITATION, LLC

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
TIMOTHY W. HOFFMAN

Chapter 11 Trustee of the Bankruptcy Estates of  
SVC and SVP

**APPROVED AS TO FORM:**

JOSEPH & COHEN, P.C.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

JONATHAN M. COHEN

Attorneys for Angelica de Vere, Teresa Sullivan,  
Sonyia Grabski, Elizabeth Matulich and  
Trinity Scott

PILLSBURY WINTHROP SHAW PITTMAN LLP

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

PHILIP S. WARDEN

Attorneys for Stephen A. Finn,  
Winery Rehabilitation, LLC and Angelica de Vere  
in the Adversary Proceeding

DUANE MORRIS LLP

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

ARON M. OLINER

Attorneys for Timothy W. Hoffman,  
Chapter 11 Trustee

# EXHIBIT B

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SANTA ROSA DIVISION**

In re

SVC,

Debtor.

Case No. 17-10065 RLE

(Jointly Administered)

Chapter 11

**NOTICE OF TRUSTEE'S INTENTION TO  
COMPROMISE CONTROVERSY WITH  
VARIOUS CREDITORS AND LITIGANTS;  
OPPORTUNITY FOR HEARING**

[NO HEARING SCHEDULED]

In re

SVP,

Debtor.

**TO THE DEBTORS, ALL CREDITORS, PARTIES IN INTEREST, AND THE OFFICE OF  
THE UNITED STATES TRUSTEE:**

**PLEASE TAKE NOTICE** that Timothy W. Hoffman ("Trustee"), the duly appointed, qualified and acting chapter 11 trustee of the bankruptcy estates ("Estates") of SVC and SVP (together, "Debtors"), intends to apply for an order authorizing the Trustee to compromise the Estates' controversies with Angelica de Vere, Theresa Sullivan, Sonyia Grabski, Elizabeth Matulich, Trinity Scott, Stephen A. Finn and Winery Rehabilitation, LLC (collectively, the "Settling Creditors"). This notice summarizes the disputes, the terms of the proposed compromise, and the procedure for objection, if any.

On February 1 and 2, 2017, SVC and SVP, respectively, filed voluntary petitions for relief in the United States Bankruptcy Court for the Northern District of California, Santa Rosa Division ("Bankruptcy Court") under the provisions of chapter 11 of the Bankruptcy Code, Case Nos. 17-10065 RLE and 17-10067 RLE ("Bankruptcy Cases"). The Debtors, which operated a winery in Rutherford, California, administered the Estates as debtors in possession until the Trustee was appointed on August 29, 2017.

In early 2018, the Trustee, with Bankruptcy Court's approval, sold the winery to Vite USA, Inc. for a confidential sale price. After payment of secured claims and other costs associated with the sale, the Trustee is holding net proceeds for the benefit of the Estates.



1 Five former employees of SVC have filed proofs of claim totaling \$9,055,560: Angelica de  
2 Vere (\$3,822,060), Theresa Sullivan (\$1,717,000), Sonyia Grabski (\$2,019,500), Elizabeth  
3 Matulich (\$1,012,000), and Trinity Scott (\$485,000) (collectively, the “Former Employees” or  
4 “Former Employee Claims” as applicable). The Former Employee Claims are tied to the claims  
5 these individuals are asserting in the Napa County Action (as defined and discussed below).

6 In addition, Stephen A. Finn and his company Winery Rehabilitation LLC (together, the  
7 “Finn Parties”) assert claims against the Estates for indemnification of attorneys’ fees and expenses  
8 (in the amounts of \$516,097.44 and \$247,970.82, respectively) and other unliquidated amounts that  
9 have been or may be incurred in both the District Court Action (as defined below) and the  
10 Bankruptcy Cases (together, the “Finn Claims”). The Finn Claims are predicated upon the terms  
11 of (i) certain prepetition loan documents entered into with the Debtors, (ii) the terms of SVC’s  
12 bylaws, (iii) an indemnification agreement entered into between Finn and SVC, (iv) applicable  
13 California state law, and (v) *Siegel v. Federal Home Loan Mortgage Corp.*, 143 F.3d 525 (9th Cir.  
14 1998).

15 In addition to the Former Employee Claims and the Finn Claims, there are three pending  
16 lawsuits involving most of the Settling Creditors. The first is an adversary proceeding the Debtors  
17 filed against Finn and Angelica de Vere (“de Vere”) prior to the Trustee’s appointment, entitled  
18 SVC v. Finn, A.P. No. 17-01023 (the “Adversary Proceeding”). The Adversary Proceeding has  
19 been reassigned to the U.S. District Court for the Northern District of California for consideration  
20 together with the second pending lawsuit, Sullivan v. Finn, Case No. 3:17-cv-05799-WHO  
21 (“District Court Action”). The District Court Action was commenced against Finn and another of  
22 his companies, Trust Company of America, Inc., by Kelleen and Ross Sullivan (together, the  
23 “Sullivans”), two members of the Sullivan Family that formerly owned the winery. Broadly  
24 speaking, the Estates in the Adversary Proceeding and the Sullivans in the District Court Action  
25 assert claims against the respective defendants for alleged breaches of their fiduciary duties while  
26 Finn was a partner of SVP and a controlling shareholder of SVC, and de Vere was an officer of  
27 SVC.

28 The Former Employees filed the third pending lawsuit against the Sullivans and SVC  
prepetition, in Napa County Superior Court, Case No. 26-67976 (“Napa County Action”), asserting  
a variety of claims, including labor code violations, wrongful termination, and breach of contract.  
The Estates filed a cross-complaint against de Vere in the Napa County Action which mirrors the  
allegations made in the Adversary Proceeding. With Bankruptcy Court approval, the Trustee has  
hired state court counsel to defend SVC, and prosecute counter-claims in the Napa County Action.  
In addition, insurance defense counsel is representing the Estates.

Over a period of several months, with the assistance of the Bankruptcy Court and a  
bankruptcy judge who volunteered his time to serve as mediator, and, separately, through mediation  
at JAMS, the Trustee worked very hard to try to bring all parties to the table and reach a global  
resolution of all claims, including any non-derivative claims the Sullivans assert against Finn.  
During that time, the Trustee kept the Court and parties apprised of his efforts to broker a global  
settlement. Unfortunately, a global settlement is not possible at this time. Thus, the Trustee has  
negotiated a compromise involving all principal parties in the Bankruptcy Cases save for the  
Sullivans.

1 The terms of the compromise are described below. However, for sake of clarity and  
2 avoidance of doubt, the proposed compromise does not resolve claims between the Finn Parties  
3 and the Sullivans. The terms of the compromise are as follows:

4 Upon entry of a final order approving this compromise, the Former Employee Claims will  
5 be withdrawn with prejudice. The Napa County Action (including the Estates' Cross-Complaint  
6 against de Vere) will be dismissed with prejudice. All of the Parties to the Napa County Action  
7 will execute a release of any and all claims against each other, including a waiver of § 1542 of the  
8 California Civil Code, and will bear their own attorneys' fees and costs.

9 Moreover, the Finn Claims will be subordinated to all trade debt claims reflected in the  
10 Debtors' schedules and proofs of claim currently on file in the Bankruptcy Cases, to the extent such  
11 claims are allowed. Finn will undertake full responsibility to completely resolve the Former  
12 Employee Claims without increasing the Finn Claims, *i.e.*, Finn will not seek indemnification from  
13 the Estates for sums paid to resolve the Former Employee Claims, or expenses incurred in resolving  
14 these claims. However, the Finn Claims are not being liquidated or otherwise resolved and settled  
15 as part of this compromise.

16 The Trustee, on behalf of the Estates, will dismiss all of the Estates' claims against the Finn  
17 Parties and de Vere in the District Court Action with prejudice. The Estates will execute a release  
18 of any and all claims against the Finn Parties, including a waiver of § 1542 of the California Civil  
19 Code. However, the Sullivans' claims against Finn and Trust Company of American, Inc. in the  
20 District Court Action will not be dismissed and are not being released as part of this compromise.

21 The Trustee believes this compromise is in the best interest of creditors and the Estates. In  
22 making this determination, the Trustee took into account (1) the probability of success in the  
23 litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the  
24 complexity of the litigation involved, and the expense, inconvenience and delay necessarily  
25 attending it; and (4) the paramount interest of creditors (collectively, the "A&C Factors"). In re  
26 A&C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986).

27 Probability of Success. This factor supports the proposed compromise. As an initial matter,  
28 the Trustee believes the Estates are solvent. In other words, funds in the Estates should be sufficient  
to pay all claims in full. The Settling Creditors' claims and defenses, and those held by the Estates,  
if litigated to conclusion are hard to quantify and predict. There is great uncertainty as to the  
ultimate outcomes. The Court is well familiar with the docket, but among other things, the Former  
Employee Claims have been amended from time-to-time, their former counsel has been disqualified  
by Order of the Court, and the same claims asserted in the Bankruptcy Cases are heading to trial in  
the Napa County Action. Meanwhile, in the Adversary Proceeding and District Court Action, the  
Estates will be forced to continue incurring expenses prosecuting their claims against Finn and de  
Vere. If Finn were ultimately to prevail in the District Court Action and obtain a defense verdict,  
he would assert his alleged entitlement to indemnification for his accruing attorneys' fees and costs,  
which would inflate his claim substantially higher than it is now. In short, there are unforeseeable  
twists and turns in these disputes, and the Trustee cannot realistically advise the Court that the  
Estates' success is probable, much less predictable.

1        Difficulties in Collection. The difficulty in ultimately collecting against Finn is uncertain  
2 in one respect. While the Trustee believes that Finn can respond, in funds, to any judgment, the  
3 Trustee is absolutely certain that Finn will exhaust any and all available appeals, motions for  
4 reconsideration and the like in the event the District Court rules against Finn. This will drive up  
5 fees substantially. The Estates' ability to collect on a potential judgment against de Vere is  
6 unknown. With respect to the Former Employee claims, this factor is neutral because the Estates  
7 are not asserting claims against the Former Employees. Rather, if this compromise is approved,  
8 there will be over \$9 million in unsecured claims withdrawn from the Estates.

9        Complexity, Delay and Expense of Litigation. This factor strongly supports the proposed  
10 compromise. At present, absent a compromise, the Napa County Action will continue to proceed  
11 to trial, judgment, and any appeals that follow. The District Court Action will proceed on a similar  
12 track. Given the history between the Settling Creditors and the Sullivans, the Trustee believes it  
13 will take many years to fully and finally resolve these disputes, all at great cost and significant  
14 delay to the Estates. Moreover, in the Napa County Action, coverage counsel may discontinue its  
15 defense on behalf of the Estates.

16        Paramount Interest of Creditors. This factor also strongly supports the proposed  
17 compromise. When approved by this Bankruptcy Court, the compromise will result in the  
18 withdrawal of over \$9 million of unsecured claims in the Bankruptcy Cases. It will also resolve  
19 the Napa County Action and Adversary Proceeding in full, while resolving all the Estates' claims  
20 in the District Court Action. With these disputes fully and finally resolved, the Trustee will be in  
21 a position to either proceed with a structured dismissal, or, more likely, a simple Chapter 11 plan.  
22 In either instance, this compromise will benefit creditors in that the intractable disputes between  
23 the Estates and the Settling Creditors will be resolved, clearing the way for an orderly conclusion  
24 to these cases.

25        **PLEASE TAKE FURTHER NOTICE** that the Trustee intends to apply to the  
26 above-entitled Court for an order approving this compromise. Bankruptcy Local Rule 9014 of the  
27 United States Bankruptcy Court for the Northern District of California prescribes the procedures  
28 to be followed in the event that you have an objection to the compromise as proposed. To that  
29 end:

30        **Any objection to the requested relief, or a request for hearing on the matter, must be  
31 filed and served upon the initiating party within 21 days of mailing the notice;**

32        **Any objection or request for a hearing must be accompanied by any declarations or  
33 memoranda of law any requesting party wishes to present in support of its position;**

34        **If there is no timely objection to the requested relief or a request for hearing, the court  
35 may enter an order granting the relief by default.**

36        **In the event of a timely objection or request for hearing, the initiating party will give  
37 at least seven days written notice of the hearing to the objecting or requesting party, and to  
38 any trustee or committee appointed in the case.**

1 Any objections or requests for hearing should be filed with the United States Bankruptcy  
2 Court, 99 South "E" Street, Santa Rosa, California 95404. A copy of the objection should be  
3 served on the Office of the United States Trustee and counsel for the Trustee at the address shown  
4 below. The Office of the United States Trustee is located at 450 Golden Gate Avenue, 5<sup>th</sup> Floor,  
Suite #05-0153, San Francisco, California 94102. For further information regarding the foregoing,  
please contact counsel for the Trustee at the address shown below.

5 Dated: January 31, 2019

**DUANE MORRIS LLP**

7 By: /s/ Aron M. Oliner (152373)

8 ARON M. OLINER

**DUANE MORRIS LLP**

One Market Plaza

Spear Street Tower, Suite 2200

San Francisco, California 94105-1127

Telephone: (415) 957-3000

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Attorneys for Chapter 11 Trustee

TIMOTHY W. HOFFMAN

Aron M. Oliner (SBN: 152373)  
Geoffrey A. Heaton (SBN: 206990)  
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One Market Plaza  
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Counsel for Chapter 11 Trustee  
TIMOTHY W. HOFFMAN

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SANTA ROSA DIVISION**

In re  
  
SVC,  
  
Debtor.

Case No. 17-10065 RLE  
(Jointly Administered)  
Chapter 11

**CERTIFICATE OF SERVICE**

In re  
  
SVP,  
  
Debtor.

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Duane Morris LLP and my business address is One Market Plaza, Spear Street Tower, Suite 2200, San Francisco, California 94105-1127. I am readily familiar with the business practice for collection and processing of correspondence for mailing and for transmitting documents by U.S. Mail, FedEx, fax, email, courier and other modes. On January 31 2019, I served the following document:

- **NOTICE OF TRUSTEE'S INTENTION TO COMPROMISE CONTROVERSY WITH VARIOUS CREDITORS AND LITIGANTS; OPPORTUNITY FOR HEARING**

X BY MAIL: by placing (☐ the original) (☒ a true copy) thereof enclosed in a sealed envelope, addressed as set forth below, and placing the envelope for collection and mailing following my firm's ordinary business practices, which are that on the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in San Francisco, California, with postage fully prepaid.

**COURT MAILING MATRIX – ATTACHED**

X BY OVERNIGHT DELIVERY: by placing (☐ the original) (☒ a true copy) thereof enclosed in a sealed FedEx envelope addressed as set forth below, and placing the envelope for collection and transmittal by FedEx following my firm's ordinary business practices, which are that on the same day correspondence is placed for collection, it is deposited in the ordinary course of business with FedEx for overnight next business day delivery.

*(Chambers Copy)*  
The Honorable Roger L. Efremsky  
Attn: Courtroom Deputy  
United States Bankruptcy Court  
Northern District of California  
Oakland Division  
1300 Clay Street #300  
Oakland, CA 94612

I declare under penalty of perjury under the laws of the United States of American that the foregoing is true and correct and that this declaration was executed on January 31, 2019, in San Francisco, California.

\_\_\_\_\_  
/s/ Deanna Micros (xxx-xx-5693)  
DEANNA MICROS

Label Matrix for local noticing  
0971-1  
Case 17-10065  
Northern District of California  
Santa Rosa  
Thu Jan 31 12:12:11 PST 2019

AT and T Mobility  
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Carol Stream, IL 60197-6463

Andrea Cow  
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c/o Valerie Bantner Peo, Esq.  
Buchalter, a Professional Corporation  
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Bob & Duffs Pest Control  
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Bankruptcy Group  
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Castellucci Napa Valley  
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Bachecki, Crom & Company, LLP  
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3700 Business Drive  
Sacramento, CA 95820-2140

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%AT&T SERVICES INC.  
KAREN A. CAVAGNARO LEAD PARALEGAL  
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Anthem Blue Cross  
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Bankruptcy Group MIC 92E  
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California Dept of Food and Ag.  
1220 N Street  
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Winery Rehabilitation, LLC 7103 South Revere Parkway Centennial, CO 80112-3936	Winery Rehabilitation, LLC c/o Pillsburty Winthrop Shaw Pittman LLP Four Embarcadero Ctr. 22nd Fl. San Francisco, CA 94111-4106	Wineshipping 50 Technology Court Napa, CA 94558-7519
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The following document(s) are associated with this transaction:

**Document description:**Main Document

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**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=1017961465 [Date=1/31/2019] [FileNumber=34970095-0] [ad2d7d04ecf6d17892bf9d55c3847b4ef2eb07823a8852d4368757f55ef23caea8db9c0ed9df404b030c9c486cbf17e0094c750f544d893be459a8ca84dee375]]

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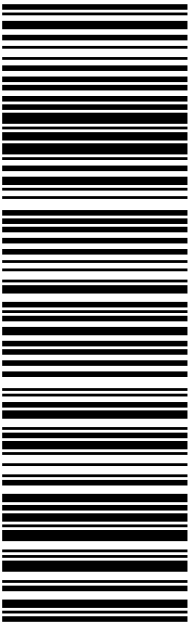
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# EXHIBIT D

# EXHIBIT A

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and among Angelica de Vere, Teresa Sullivan, Sonyia Grabski, Elizabeth Matulich, Trinity Scott, Stephen A. Finn, Winery Rehabilitation, LLC and Timothy W. Hoffman ("Trustee"), chapter 11 trustee of the bankruptcy estates ("Estates") of SVC and SVP (together, "Debtors").

### RECITALS

A. On December 31, 2015, Angelica de Vere ("de Vere"), Teresa Sullivan ("Teresa"), Sonyia Grabski ("Grabski"), Elizabeth Matulich ("Matulich") and Trinity Scott ("Scott") (collectively, the "Former Employees") filed a complaint in Napa County Superior Court against SVC, Kelleen Sullivan and Ross Sullivan, asserting claims for, inter alia, wrongful termination, breach of contract, slander and civil assault, Case No. 26-67976 ("Napa County Action").

B. On January 12, 2017, SVC filed a cross-complaint ("Napa County Cross-Complaint") against de Vere in the Napa County Action.

C. On February 1 and 2, 2017, SVC and SVP, respectively, filed voluntary petitions for relief in the United States Bankruptcy Court for the Northern District of California, Santa Rosa Division ("Bankruptcy Court") under the provisions of chapter 11 of the Bankruptcy Code, Case Nos. 17-10065 RLE and 17-10067 RLE ("Bankruptcy Cases").

D. On February 15, 2017, SVC filed its bankruptcy schedules [Docket No. 25], wherein it scheduled SVP as holding a general unsecured claim in the amount of \$2,130,720.00 based upon a trade payable (the "SVP Intercompany Claim").

E. On March 1, 2017, de Vere filed a general unsecured proof of claim in SVC's case in the amount of \$1,046,826.00, assigned Claim No. 5 in SVC's case. On March 7, 2018, de Vere filed an amendment to Claim 5 in the amount of \$3,822,060.00, assigned Claim No. 17 in SVC's case.

F. On March 1, 2017, Teresa filed a general unsecured proof of claim in SVC's case in the amount of \$185,769.00, assigned Claim No. 6. On March 9, 2018, Teresa amended Claim No. 6. As amended, Claim No. 6 is asserted in the amount of \$1,717,000.00.

G. On March 1, 2017, Grabski filed a general unsecured proof of claim in SVC's case in the amount of \$429,134.00, assigned Claim No. 7. On March 15, 2018, Grabski amended Claim No. 7. As amended, Claim No. 7 is asserted in the amount of \$2,019,500.00.

H. On March 1, 2017, Matulich filed a general unsecured proof of claim in SVC's case in the amount of \$305,000.00, assigned Claim No. 8. On March 16, 2018, Matulich amended Claim No. 8. As amended, Claim No. 8 is asserted in the amount of \$1,012,000.00.

I. On March 1, 2017, Scott filed a general unsecured proof of claim in SVC's case in the amount of \$55,000.00, assigned Claim No. 9. On March 19, 2018, Scott amended Claim No. 9. As amended, Claim No. 9 is asserted in the amount of \$485,000.00.

J. On April 10, 2017, Winery Rehabilitation, LLC (“WR”) filed Claim Nos. 11 and 12 in SVC’s case against SVP and SVC, respectively, asserting secured claims in the amount of \$9,940,098.42.

K. On April 10, 2017, Finn filed Claim Nos. 13 and 14 in SVC’s case against SVP and SVC, respectively, asserting secured claims in the amount of \$4,656,692.36.

L. On July 14, 2017, the Debtors, as debtors-in-possession, filed an adversary proceeding against Stephen A. Finn (“Finn”) and de Vere, asserting claims for money damages and objection to the claims of Finn and de Vere, A.P. No. 17-01023 (“Adversary Proceeding”).

M. On August 29, 2017, the Trustee was appointed as chapter 11 trustee of the Estates, and succeeded to the Debtors as plaintiff in the Adversary Proceeding and cross-complainant in the Napa County Action.

N. On October 6, 2017, Kelleen Sullivan and Ross Sullivan, who are not parties to this Agreement, filed a complaint against Finn and Trust Company of America, Inc. in the United States District Court for the Northern District California, San Francisco Division (“District Court”), asserting claims for, *inter alia*, breach of fiduciary duty and unfair business practices, Case No. 3:17-cv-05799-WHO (“District Court Action”).

O. On December 11, 2017, as authorized by the *Order Authorizing Trustee to (1) Sell Real and Personal Property Assets of Debtors Free and Clear of Liens and Encumbrances Pursuant to 11 U.S.C. § 363(b) and (f), and (2) Assume and Assign Executory Contracts Pursuant to 11 U.S.C. § 365* [Docket No. 249], the Trustee paid distributions to Finn and WR on account of their secured claims, in the aggregate amount of \$17,798,383.20, from the proceeds of the sale of substantially all assets of the Debtors.

P. On March 6, 2018, Finn amended Claim Nos. 13 and 14 to assert further secured claims for attorneys’ fees in the amount of \$200,000.00. On September 11, 2018, Finn amended Claim Nos. 13 and 14 a second time to assert secured claims for attorneys’ fees in the amount of \$516,097.44 and to assert general unsecured claims for indemnification in an unliquidated amount.

Q. On September 11, 2018, WR amended Claim Nos. 11 and 12 to assert further secured claims for attorneys’ fees in the amount of \$247,970.82.

R. In November of 2018, the Adversary Proceeding was transferred to the District Court for consideration with the District Court Action. The Adversary Proceeding is currently pending as Case No. 3:18-cv-07088-WHO.

S. Finn, WR and the Former Employees (collectively, the “Settling Creditors”) and the Trustee have engaged in settlement discussions concerning the matters set forth above.

T. Finn has agreed to provide confidential consideration to the Former Employees to resolve the Former Employees’ claims.

U. The Former Employees are participating in this Agreement due to the economic benefit it provides in alleviating the need for further litigation.

**NOW THEREFORE**, in consideration of the foregoing, and intending to be bound as set forth herein, the Settling Creditors and the Trustee agree as follows:

### **AGREEMENT**

1. Withdrawal of Former Employee Claims. Claim Nos. 5, 6, 7, 8, 9 and 17 (collectively, the “Former Employee Claims”) filed by the Former Employees shall be withdrawn with prejudice. The Bankruptcy Court’s order approving this settlement requires withdrawal of the Former Employee Claims with prejudice.

2. Subordination of Finn Party Claims. Claim Nos. 11, 12, 13 and 14 (collectively, the “Finn Party Claims”) filed by WR and Finn shall be subordinated to all trade debt reflected in the Debtors’ schedules and proofs of claim currently on file in the Bankruptcy Cases, to the extent such trade debt claims are allowed; provided, however, that the Finn Party Claims shall not be subordinated to the SVP Intercompany Claim or any part thereof. For the avoidance of doubt, the amount of trade debt claims to which the Finn Party Claims shall be subordinated is anticipated to be approximately \$250,000 in the aggregate. The Bankruptcy Court’s order approving this settlement provides for subordination of the Finn Party Claims as set forth herein. Neither the Finn Party Claims nor the SVP Intercompany Claim are being liquidated or otherwise resolved by this Agreement. Except as set forth in this Agreement, the Parties reserve all rights as to the Finn Party Claims and the SVP Intercompany Claim.

3. Dismissal of Napa County Action. The Former Employees shall cause the claims against SVC in the Napa County Action to be dismissed with prejudice. The Trustee shall cause the Napa County Cross-Complaint to be dismissed with prejudice. The Former Employees’ claims against Kelleen Sullivan shall be dismissed without prejudice.

4. Dismissal of Adversary Proceeding. The Trustee shall cause the Adversary Proceeding to be dismissed with prejudice.

5. Waiver of Right to Amend Proofs of Claims to Include Any Consideration Finn Provides to Former Employees. Finn and WR (together, the “Finn Parties”) waive and release any rights to, and shall not, amend any of the Finn Party Claims to seek to recover any consideration provided to resolve the Former Employee Claims.

6. Costs and Expenses of Settlement. The Settling Creditors and the Trustee shall bear all their own costs, expenses and attorneys’ fees incurred in connection with the Napa County Action, Adversary Proceeding, District Court Action and the Bankruptcy Cases, and the negotiation, preparation and application for Bankruptcy Court approval of this Agreement.

7. Approval by Bankruptcy Court. The Trustee shall cause his attorneys to obtain all necessary orders of the Bankruptcy Court to approve this Agreement. If the Agreement is not approved by the Bankruptcy Court, it shall be of no force or effect.

8. Release of Claims.

(a) Except as expressly set forth herein, the Former Employees, for themselves and on behalf of any and all parties claiming by or through them, hereby forever release and discharge the Trustee, his agents, attorneys, successors, representatives and the Estates (together,

the "Trustee Released Parties") from any and all causes of action, actions, liabilities, demands, obligations, costs, expenses, or claims (hereinafter collectively "Claims") of any nature whatsoever, whether arising before or after the commencement of the Bankruptcy Cases, including, without limitation, any Claims that arise under the United States Bankruptcy Code, whether such Claims are known, unknown, suspected, unsuspected, fixed, contingent, liquidated, unliquidated, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, and which have existed at any time up until the date of this Agreement. For the avoidance of doubt, the Trustee Released Parties do not include Kelleen Sullivan or Ross Sullivan.

(b) Except as expressly set forth herein, the Trustee, on behalf of SVC and SVP and on behalf of himself, his agents, attorneys, successors, representatives, and any and all parties claiming by or through him or the Estates, including all officers, directors, shareholders, independent contractors, employees, subsidiaries, affiliates, partners, joint venturers, co-venturers, insurers, investors, licensees, and all persons acting by, through, under, or in concert with them, hereby forever releases and discharges the Settling Creditors, their agents, attorneys, successors, representatives, officers, directors, shareholders, independent contractors, employees, subsidiaries, affiliates, partners, joint venturers, co-venturers, insurers, investors, licensees, and all persons acting by, through, under, or in concert with them, from any and all causes of action, actions, liabilities, demands, obligations, costs, expenses, accounts, promises, indemnifications, losses or claims of any nature whatsoever, whether at law or in equity, arising before or after the commencement of the Bankruptcy Cases, including, without limitation, any Claims that arise under the United States Bankruptcy Code, and all Claims in the Napa County Cross Complaint, whether such Claims are known, unknown, suspected, unsuspected, fixed, contingent, liquidated, unliquidated, matured, unmatured, disputed, undisputed, legal, equitable, due or become due, secured, or unsecured, and which they now have or hold or which have existed at any time up until the date of this Agreement, and expressly including any Claims asserted in the Adversary Proceeding now pending in the District Court (Case No. 3:18-cv-07088-WHO), and any and all Claims which could have been brought by the Estates or Trustee, on a direct or derivative basis, in any court or through the pursuit of any administrative agency or governing body. For avoidance of doubt, the Trustee is providing the Settling Creditors with the broadest possible release he may provide on behalf of the Estates, and is releasing any and all Claims held by the Estates including any claims that could have been brought by the Estates including all derivative claims. See *Stein vs. United Artists* 691F.2<sup>nd</sup> 885 (9<sup>th</sup> Circuit 1982). The Trustee is not releasing any Claims held directly and exclusively by Ross Sullivan or Kelleen Sullivan as individuals, but the Trustee is releasing Claims of the Estate that could discharge derivative or indirect claims by Ross Sullivan or Kelleen Sullivan, including (without limitation) Claims by or through the Debtor, its Estates, or either of their agents. With respect to the matters released herein, the Former Employees and the Trustee acknowledge that they have each been advised to consult with legal counsel and are familiar with the provisions of California Civil Code Section 1542 and expressly waive any and all rights they each may have under § 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

This Agreement together with the releases herein contained, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors-in-



interest, partners, directors, officers, insurers, employees, predecessors and assignees of the respective parties.

9. Compromise of Disputed Claim. The Settling Creditors and the Trustee acknowledge that the execution of this Agreement and consummation of the transactions contemplated hereby do not constitute an admission of liability or of any facts by any of the parties hereto.

10. Representations and Warranties. The parties each further expressly warrant and represent to one another as follows:

- (a) They have read this Agreement and consulted with their respective attorneys concerning its contents and legal consequences;
- (b) They have investigated the facts to the extent that they have deemed necessary in their sole discretion and have assumed any risk of mistake of fact and any facts proven to be other than or different from the facts now known to any of the parties and therefore intend this Agreement to be binding without regard to any mistake of fact or law relating to the subject matter of this Agreement;
- (c) They have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to execute this Agreement and thus warrant that they are fully authorized to bind the party for which they execute this Agreement; and
- (d) There has been and will be no assignment or other transfer of any claim released, or any part thereof.

The foregoing warranties and representations shall survive the execution and delivery of this Agreement.

11. Integration. This Agreement contains the entire agreement between the Settling Creditors and the Trustee regarding its subject matter. This Agreement cannot be modified or amended, except in writing executed by the party to be charged. Except as expressly set forth herein, there have been no representations or promises made by any party and relied upon by the other in entering into this Agreement.

12. Execution of Documents.

(a) The parties agree to act in good faith and to cooperate fully with and amongst one other in carrying out the provisions of this Agreement, and for that purpose the parties hereto each agree to execute any further documents which may be necessary to effectuate the transactions contemplated by this Agreement.

(b) This Agreement may be executed in several counterparts and, as executed, shall constitute one agreement, binding on all parties who have executed a counterpart, notwithstanding that all parties are not signatories to the original or to the same counterparts. All parties signing this Agreement acknowledge and represent they have complete authority to execute this Agreement.



(c) This Agreement may be executed by telecopy or electronically submitted signatures. This Agreement shall be binding on all parties notwithstanding that all parties' telecopied or electronically submitted signature pages are not to the same counterparts.

13. Non-disparagement. The Trustee, Debtors and Settling Creditors each agree that they will not make any disparaging or negative statements, whether written or oral, or engage in any negative communication about one another, including, but not limited to any communications about work, professional conduct or business. Trustee and Debtors further agree they will not disparage Former Employees' job performance or otherwise take any action which could reasonably be expected to adversely affect Former Employees', and each of their, personal or professional reputation.

14. Construction/Severability. In the event of a suit or other legal proceeding arising out of this Agreement, any such action shall be brought in the Bankruptcy Court and the parties hereto shall submit to the jurisdiction of the Bankruptcy Court. If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement, but in no event shall such provision affect, impair or invalidate any other provision in this Agreement. Each party acknowledges that he/she/it has participated in the drafting of this Agreement and reviewed the terms of the Agreement and as such, no rule of construction shall apply in any interpretation of this Agreement which might result in this Agreement being construed in favor of or against any party, including without limitation, any rule of construction to the effect that ambiguities ought to be resolved against the drafting party.

15. Miscellaneous.

(a) Notwithstanding any provision contained in this Agreement to the contrary, in the event of a dispute relative to any provision in this Agreement, the prevailing party shall recover his/her/its reasonable attorneys' fees, costs and expenses incurred in enforcing this Agreement, in addition to any damages caused by such dispute.

(b) Each party hereto warrants that he/she/it has made no assignment, and will hereafter make no assignment, of any claim, chose in action, right of action or any other right of any kind which is the subject of this Agreement or which is released pursuant to this Agreement, and that no other person or entity has or had any interest of any kind in the Claims referred to above.

(c) As used in this Agreement, captions and paragraph headings are provided solely for convenience and shall not be deemed to restrict or limit the meaning of the text. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against any of the parties

16. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard for choice-of-law provisions, and shall be utilized in construing or interpreting this Agreement and in enforcing the rights and remedies of the parties.

17. Notice. Any notice required or permitted to be given pursuant to this Agreement shall be deemed effective upon personal delivery or within five days after deposit with the United

States Postal Service by certified mail, postage pre-paid, return receipt requested and addressed as follows, and to such other addresses as either party may designate in writing:

If to the Former Employees: Jonathan M. Cohen  
Joseph & Cohen  
Professional Corporation  
1855 Market Street  
San Francisco, CA 94103

If to the Finn Parties: Philip S. Warden  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22<sup>nd</sup> Floor  
San Francisco, CA 94111-5998

If to the Trustee: Aron M. Oliner  
Duane Morris LLP  
One Market Plaza, Spear Tower, Suite 2200  
San Francisco, CA 94105-1127

18. Terms Read and Understood. The undersigned hereby certify that they have read all of the foregoing Agreement, have conferred with counsel of their choosing pertaining to the same, fully understand all of the terms hereof, and have authority to enter into the foregoing Agreement. The parties acknowledge and represent that they enter into this Agreement and all of the contemplated documents of their own free will and not due to any representation, commitment, promise, pressure or duress from any other party.

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
ANGELICA DE VERE

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
TERESA SULLIVAN

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
SONYIA GRABSKI

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
ELIZABETH MATULICH

Dated: \_\_\_\_\_, 2019 \_\_\_\_\_  
TRINITY SCOTT

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
STEPHEN A. FINN

WINERY REHABILITATION, LLC

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
TIMOTHY W. HOFFMAN

Chapter 11 Trustee of the Bankruptcy Estates of  
SVC and SVP

**APPROVED AS TO FORM:**

JOSEPH & COHEN, P.C.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

JONATHAN M. COHEN

Attorneys for Angelica de Vere, Teresa Sullivan,  
Sonyia Grabski, Elizabeth Matulich and  
Trinity Scott

PILLSBURY WINTHROP SHAW PITTMAN LLP

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

PHILIP S. WARDEN

Attorneys for Stephen A. Finn,  
Winery Rehabilitation, LLC and Angelica de Vere  
in the Adversary Proceeding

DUANE MORRIS LLP

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

ARON M. OLINER

Attorneys for Timothy W. Hoffman,  
Chapter 11 Trustee

# EXHIBIT E

Aron M. Oliner (SBN: 152373)  
Geoffrey A. Heaton (SBN: 206990)  
**DUANE MORRIS LLP**  
One Market Plaza  
Spear Street Tower, Suite 2200  
San Francisco, CA 94105-1127  
Telephone: (415) 957-3000  
Facsimile: (415) 957-3001  
Email: gheaton@duanemorris.com

Counsel for Chapter 11 Trustee  
TIMOTHY W. HOFFMAN

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SANTA ROSA DIVISION**

In re  
  
SVC,  
  
Debtor.

Case No. 17-10065 RLE  
(Jointly Administered)  
Chapter 11

**TRUSTEE'S CHAPTER 11 STATUS  
CONFERENCE STATEMENT**

Date: May 21, 2019  
Time: 1:30 p.m.  
Place: 1300 Clay Street, Room 201  
Oakland, CA 94612  
Judge: The Hon. Roger L. Efremsky

In re  
  
SVP,  
  
Debtor.

Timothy W. Hoffman, the duly appointed, qualified and acting Chapter 11 Trustee in these jointly administered cases ("Trustee") respectfully submits this Chapter 11 status conference statement, and represents as follows:

1 On May 8, 2019, this Court approved the Trustee's comprehensive settlement with  
2 various creditors in the case over the objection of Ross and Kelleen Sullivan (the "Sullivans").  
3 On May 10, 2019, the Trustee submitted a form of order approving that compromise. As of this  
4 writing, the lodging period has not yet run and it is unknown whether or when the Sullivans may  
5 submit their own form of order, consistent with comments made in open court on May 8 by their  
6 counsel.  
7

8 Once consummated, the result of the recently approved settlement and compromise is a  
9 much simplified and direct path forward in this case. The Trustee does not believe that  
10 conversion to chapter 7 is in the best interest of creditors. Neither is a structured dismissal (even  
11 were the Office of the United States Trustee to approve such an approach, which it will not)  
12 possible because of the remaining outstanding claims in the case. Thus, the most realistic and  
13 sensible path forward is a simple chapter 11 plan.  
14

15 The Trustee believes that he can file a proposed plan and disclosure statement within the  
16 next 30-45 days. This would be a "pot plan" and, at confirmation, would provide for the  
17 immediate payment of all trade debt. The remaining funds in these administratively consolidated  
18 estates will be allocated to each estate and held in trust pending resolution of the remaining few  
19 claims in the case, namely, the claims of Stephen Finn and Winery Rehabilitation.  
20

21 In light of still pending litigation in the District Court between Mr. Stephen Finn and  
22 Winery Rehabilitation, on the one hand, and the Sullivans, on the other hand, it does not appear  
23 possible to liquidate the claims held by Mr. Finn and Winery Rehabilitation until that litigation is  
24 resolved. The proposed plan will require that all funds be held in trust. The Sullivans will not be  
25 able to access the funds to pursue their separate claims against Finn and Winery Rehabilitation.  
26 The Trustee believes that the confirmation of a proposed plan will not be difficult to obtain in  
27 these circumstances. It is perhaps the best use of the Court's time to schedule a continued  
28

Chapter 11 status conference coincident with the first hearing on the Trustee's proposed plan and disclosure statement.

Respectfully submitted,

Dated: May 13, 2019

**DUANE MORRIS LLP**

By: /s/ Aron M. Oliner (152373)

Aron M. Oliner

Counsel to Chapter 11 Trustee

TIMOTHY W. HOFFMAN




# EXHIBIT F



Aron M. Oliner (SBN: 152373)  
Geoffrey A. Heaton (SBN: 206990)  
**DUANE MORRIS LLP**  
One Market Plaza  
Spear Street Tower, Suite 2200  
San Francisco, CA 94105-1127  
Telephone: (415) 957-3000  
Facsimile: (415) 957-3001  
Email: gheaton@duanemorris.com

The following constitutes the order of the Court.  
Signed: May 20, 2019

  
\_\_\_\_\_  
Roger L. Efremsky  
U.S. Bankruptcy Judge

Counsel for Chapter 11 Trustee  
TIMOTHY W. HOFFMAN

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SANTA ROSA DIVISION**

In re  
SVC,  
Debtor.

Case No. 17-10065 RLE  
(Jointly Administered)  
Chapter 11

**ORDER AUTHORIZING TRUSTEE TO  
ENTER INTO COMPROMISE  
CONTROVERSY WITH VARIOUS  
CREDITORS AND LITIGANTS**

In re  
SVP,  
Debtor.

On the basis of the Application for Order Authorizing Trustee to Enter into Compromise with Various Creditors and Litigants (“Application”), due and proper notice having been given, no objection having been filed, and good cause appearing therefor,

**IT IS HEREBY ORDERED** as follows:

1. The Application is approved.

1           2.       Chapter 11 trustee Timothy W. Hoffman, Angelica de Vere, Teresa Sullivan,  
2 Sonyia Grabski, Elizabeth Matulich, Trinity Scott, Stephen A. Finn and Winery Rehabilitation,  
3 LLC are authorized to execute any and all documents and to take any and all steps necessary and  
4 proper to compromise the controversy as described in the Application.

5           3.       Claim No. 5 in SVC's case filed by Angelica de Vere, and any amendments  
6 thereto, are hereby withdrawn with prejudice.  
7

8           4.       Claim No. 17 in SVC's case filed by Angelica de Vere, and any amendments  
9 thereto, are hereby withdrawn with prejudice.

10          5.       Claim No. 6 in SVC's case filed by Teresa Sullivan, and any amendments thereto,  
11 are hereby withdrawn with prejudice.

12          6.       Claim No. 7 in SVC's case filed by Sonyia Grabski, and any amendments thereto,  
13 are hereby withdrawn with prejudice.  
14

15          7.       Claim No. 8 in SVC's case filed by Elizabeth Matulich, and any amendments  
16 thereto, are hereby withdrawn with prejudice.

17          8.       Claim No. 9 in SVC's case filed by Trinity Scott, and any amendments thereto,  
18 are hereby withdrawn with prejudice.

19          9.       Consistent with paragraph 2 of the Settlement Agreement, nothing in this Order  
20 allows or disallows any claims filed by Winery Rehabilitation, LLC, or Stephen A. Finn,  
21 including but not limited to Claim Nos. 11, 12, 13 and 14 (collectively, the "Finn Party Claims").  
22 The Finn Party Claims shall be subordinated in their entirety to all trade debt reflected in the  
23 captioned debtors' schedules and proofs of claim currently on file in the Bankruptcy Cases, to  
24 the extent such claims are allowed, provided, however, that the Finn Party Claims shall not be  
25 subordinated to the general unsecured claim in the amount of \$2,130,720.00 listed in SVC's  
26 bankruptcy schedules [Docket No. 25] as a trade payable due SVP.  
27  
28

1           10.     The Settlement Agreement and the approval of the compromise herein shall have  
2 no effect on claims possessed by Ross and Kelleen Sullivan, in their individual capacities,  
3 against Mr. Finn or any of his affiliates or entities, which are not being released under the  
4 Settlement Agreement.

5  
6           11.     Notwithstanding anything to the contrary in paragraph 8(b) of the Settlement  
7 Agreement, no release of the Buchalter law firm or any of its past or present attorneys shall be  
8 effected herein. Any and all claims the Debtors and Trustee may have against Buchalter shall be  
9 expressly preserved.

10  
11                               **\*\*\* END OF ORDER \*\*\***

12  
13           **APPROVED AS TO FORM AND CONTENT.**

14  
15     Dated: May 10, 2019

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

16           BY: /s/ Philip S. Warden (54752)

17                     Attorneys for Stephen A. Finn,  
18                     Winery Rehabilitation, LLC and Angelica de Vere

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**COURT SERVICE LIST**

[All parties entitled to service are ECF registered in this case.]

# EXHIBIT G

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE ROGER L. EFREMSKY, JUDGE

In Re:	)	Case No. 17-10065-RLE-11
	)	(Corrected transcript)
	)	<u>TRUSTEE'S APPLICATION for</u>
SULLIVAN VINEYARDS CORPORATION,	)	<u>ORDER AUTHORIZING TRUSTEE to</u>
	)	<u>ENTER INTO COMPROMISE with</u>
	)	<u>VARIOUS CREDITORS and</u>
Debtor.	)	<u>LITIGANTS</u>
	)	May 8, 2019
	)	Oakland, California

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Appearances:

For the Sullivan Family:	John D. Fiero, Esq. Pachulski Stang Ziehl & Jones 150 California Street, 15th Floor San Francisco, California 94111-4500
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Daniel Mason, Partner  
Furth Salem Mason & Li, LLP  
101 California Street, Suite 2710  
San Francisco, California 94111

For the Creditor Employees:	Jonathan Cohen Joseph & Cohen, PC 1855 Market Street San Francisco, California 94103
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For Creditors Winery Rehabilitation, LLC and Stephen A. Finn:	Philip S. Warden, Esq. Pillsbury Winthrop Shaw Pittman LLP 4 Embarcadero Center, 22 <sup>nd</sup> Floor San Francisco, California 94111-5998
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For Chapter 11 Trustee Timothy W. Hoffman:	Ron Oliner, Esq. Law Offices of Duane Morris 1 Market, Spear Tower Suite 2200 San Francisco, California 94105-3104
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Digital Court Recorder:	United States Bankruptcy Court Clerk of the Court Lydia Menendez 1300 Clay Street, Third Floor Oakland, California 94612
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Certified Electronic Transcriber:	Palmer Reporting Services
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Proceedings recorded by digital recording;  
transcript produced by federally-approved transcription service.

PALMER REPORTING SERVICES

Monday, May 8, 2019

2:23 o'clock p.m.

P R O C E E D I N G S

THE COURT: I'll take up line item 6, Case 17-10065.

MR. OLINER: Good afternoon, Your Honor. Ron Oliner, Duane Morris, counsel for Chapter 11 Trustee Timothy Hoffman.

THE COURT: All right. Good afternoon.

MR. FIERO: Good afternoon, Your Honor. John Fiero of Pachulski Stang for the Sullivan family and also with me here is Dan Mason of the Furth, Salem and Mason firm and he is counsel in the matter proceeding before Judge Orrick.

THE COURT: All right. Very good. Thank you.

MR. WARDEN: Good afternoon, Your Honor. I'm Philip Warden for the – for Mr. Finn and for Ms. De Vere and for Winery Rehabilitation. Thank you, sir.

THE COURT: Good afternoon.

MR. COHEN: And good afternoon, Your Honor. Jonathan Cohen on behalf of the creditor employees.

THE COURT: All right. Good afternoon.

MR. OLINER: It is an auspicious day in this case, where we have, subject to your approval, solved – I don't want to give it a percentage, but a whole big chunk of this case. And it's been in our papers and probably flawed, but the benefits are large. Parties will undoubtedly characterize it differently, but from the trustee's perspective this gets rid of \$9 million in claims that we've defined are the five ladies in



1 the case are being waived, are gone from the estate. Mr.  
2 Warden's client is taking care of them, paying them. We don't  
3 know how much or how that's resolved. We always deem those  
4 claims very puffy, as you know. But the bottom line is that's  
5 gone.

6 THE COURT: All right.

7 MR. OLINER: The — Mr. Warden's clients' claims,  
8 remaining claims, the so-called indemnity claims, to which Mr.  
9 Fiero has objected, and I think that's either tabled or in the  
10 ether somewhere, are not being liquidated, and so whatever — any  
11 basis to object to them survives today. And they're — but they  
12 are because Mr. Warden's clients have agreed, being  
13 subordinated, to trade, so the third parties who aren't sending  
14 lawyers to court every day through the life of this case are  
15 going to get paid. There's absolutely immutably funds to pay  
16 them in full.

17 THE COURT: And that's about a quarter of a million?

18 MR. OLINER: I think that's right. Right in that  
19 range.

20 The estate's lawsuit against Mr. Warden's clients,  
21 which was filed by Steve Olson, not the trustee, in which I  
22 think we have characterized it as at least very, very similar to  
23 the claims that have been asserted by the Sullivans individually  
24 in Mr. — in Judge Orrick's court, that's gone too. We are  
25 giving — we are dismissing those estate's — that estate's

1 adversary proceeding against Mr. Warden's clients with  
2 prejudice.

3           The estate is giving Mr. Warden's clients the broadest  
4 possible release. The universe of claims that this estate has,  
5 including 1542 language, are gone. Now that's all I really want  
6 to say about that. The – there has been some back and forth,  
7 and I don't want to characterize or put words in the mouths of  
8 way too many lawyers in the courtroom, about what is and isn't  
9 being given up. I think each side can tell you what they think  
10 the order should contain. It's a deal that makes eminent sense  
11 for the estate. It turns an 800-paid gorilla of a case into, I  
12 don't know, I'm sort of embellishing here, a much smaller  
13 gorilla, one that we can handle, because then we'll know we have  
14 a pot of money, a couple of remaining issues, these claims by  
15 Mr. Finn's client, the intercompany claim with which I think  
16 you're familiar, and then we will move forward with some kind of  
17 an exit strategy from there.

18           So unless you have questions, I –

19           THE COURT: I think the only – I have a couple of  
20 things just to clarify. I want to be clear. It's my  
21 understanding that the former employees, the five ladies as you  
22 refer to them, that with regards to the Sullivans, they are  
23 going to dismiss the Napa action but without prejudices to the  
24 Sullivans, and that's really not part of – I just –

25           MR. OLINER: Yeah.

1 THE COURT: - want to be clear about that.

2 MR. OLINER: Yeah. Thank you. And you reminded me, I  
3 forgot to say something else as well. With respect to that,  
4 there was much ink spilled, much pressure on the trustee to  
5 include the ladies specifically in this settlement agreement,  
6 and that's a whole second tranche of lawyers. And we held fast  
7 and said you guys solve that on your own.

8 Someone else can tell you what's going on there.  
9 Despite the initial objection filed by Mr. Fiero suggesting that  
10 that's a condition precedent to this deal, it's not. And what  
11 has gone on between the ladies in state court and the Napa  
12 County case, that's not our problem.

13 THE COURT: Right.

14 MR. OLINER: We'd like it not to be our problem.

15 I forgot to mention one more thing. It was raised by  
16 Mr. Fiero and appropriately so. Buchalter, they came in, they  
17 were riven with conflict, they were disqualified, they had to be  
18 pushed out forcefully with court orders. When we in our  
19 language in the settlement agreement included a very broad  
20 release of all attorneys, et cetera, et cetera, we did not  
21 intend to include a release of the Buchalter firm. That will be  
22 specifically carved out in the form of order. It was raised by  
23 the Sullivans' lawyer. It's been surfaced by - with everybody.  
24 No one is standing in the way of that, so we -

25 THE COURT: And it carves out the Buchalter firm as

1 well as the attorneys at Buchalter that worked on the case?

2 MR. OLINER: Correct.

3 THE COURT: Okay. All right. The other question I  
4 have is that with regards to the matter of Kelleen F. Sullivan,  
5 et al. versus Stephen A. Finn, et al., Case Number 3:17CV05799,  
6 before Judge Orrick, it's my understanding that this settlement,  
7 that it should be clear that this motion, if approved by the  
8 court, is not intended and should not be interpreted as serving  
9 to release any claims held by any member of the Sullivan family  
10 as individuals against any defendant in the district court  
11 action noted above, if there is one, because Judge Orrick has  
12 not ruled on that. He had some tentative decisions saying there  
13 might be something that survives, but I want to make it clear  
14 that this is not – the settlement does not attempt to release  
15 any of their individual claims that they would have the right to  
16 bring individually. It's only releasing the estate's actions.

17 MR. OLINER: The settlement agreement, and I'm going  
18 to sound like I'm playing a little bit of gamesmanship with you,  
19 it's not my intention, there are attorneys –

20 THE COURT: I'm using Mr. Fiero's word –

21 MR. OLINER: Yes, I know you are.

22 THE COURT: – when he filed in – and I want – Mr.  
23 Warden might have a different way of –

24 MR. OLINER: I need –

25 THE COURT: – and might agree with it but have

1 different language. I was just using that to paraphrase it for  
2 purposes of the question.

3 MR. OLINER: I'm going to yield in just a few seconds  
4 for these counsels to argue about that. The settlement  
5 agreement offers only this: The broadest possible release of  
6 the estate's claims that can be given to Mr. Warden's clients.  
7 Lawyers will want to put language into the order which either  
8 colors Judge Orrick's next move one way or the other. I'm going  
9 to leave that here. I'm well aware of Mr. Fiero's position and  
10 how he wants some clarity there. I'll just leave that to Your  
11 Honor.

12 THE COURT: Okay. All right. Mr. Fiero.

13 MR. FIERO: Your Honor, John Fiero for the Sullivans.  
14 Thank you for honing in on the one issue that we want to walk  
15 out of here with clarity about, and that is, just as you read  
16 into the record, that no individual claim of a Sullivan family  
17 member is affected by this settlement; that the trustee was not  
18 trying to give up such claims; and that there was no bargain by  
19 which they should be surrendered.

20 And to that end, Your Honor, I circulated this morning  
21 a proposed form of order which marks up the trustee's form of  
22 order that had been circulated earlier among counsel. And this  
23 is what I can report. And in that, I tried to thread that exact  
24 needle, preserving all Sullivan family member claims. And when  
25 I say Sullivan family member claims, I mean Ross and Kelley and

1 I mean their siblings, everyone who has an ownership interest in  
2 SVC.

3 And with regard to that, Your Honor, I think the  
4 trustee's position is they're agnostic to the mark-up and  
5 they're okay with the way it is, but they don't want to stand up  
6 and say, yes, this is a good iteration of our bargain, but I  
7 think that is the truth. I know that Mr. Finn doesn't agree  
8 with the mark-up that I've sent. And I haven't had a chance to  
9 connect with Mr. Cohen about his views, although I would expect  
10 he would be agnostic as well because his clients are riding off  
11 into the sunset and it is the Sullivans who are left to deal  
12 with Mr. Finn.

13 And so if it would be okay, Your Honor, I'd like to  
14 approach and hand up the redline of Mr. Oliner's order that I  
15 circulated this morning so that the Court can see what language  
16 we would propose be in the order. Mr. - every lawyer in the  
17 courtroom who cares about this, Your Honor, has a copy of this  
18 order, I've handed it out this afternoon. And so I think it  
19 might just help frame our discussion. But with that, I don't  
20 have anything more to add. You understand our position and  
21 we've tried to encapsulate it in this marked-up order.

22 THE COURT: Okay. Let me just make a preliminary  
23 comment. Mr. Oliner would prepare an order, parties disagree  
24 with it. What I typically do is ask the respective counsels to  
25 submit an order and specifically save our client with 99.9

1 percent of these particular clauses we think should be written  
2 this way, I would then ask you to submit a letter with that.  
3 I've looked at it. If I felt comfortable, didn't have any  
4 questions, I'd probably choose the one that I think is most  
5 appropriate. If I have any issues, then I'd get everybody back  
6 on the phone or have another hearing on this. Preliminarily,  
7 that's how I would deal with this.

8 I'd be happy to take a look at it today. On the other  
9 hand, Mr. Warden just got this, I'm assuming, today, and so he's  
10 not really going to be in a position to say yea or nay. But I  
11 would be happy to hear comments from Mr. Warden about that,  
12 because one of the things that comes to my mind, and again I  
13 haven't looked at the lawsuit that was filed before Judge Orrick  
14 in some time, but the — Mr. Warden's position is, is it's all  
15 derivative, so with this release by the trustee, that suit goes  
16 away. Judge Orrick has kind of issued a tentative saying,  
17 'Well, I think something may survive.'

18 But one of the questions that comes to my mind is if  
19 the Sullivans individually have a cause of action that they can  
20 bring, not the estate, the estate has no authority to bring, but  
21 it's something they and only they individually could bring, I  
22 think that's clear, but my question would be what if there is a  
23 cause of action, and again I haven't thought this through, but  
24 if there was an action possibly the estate and the Sullivans  
25 could both bring that possibly would just be derivative, but

1 that would be my only concern, whether it'd be some potential  
2 gray area.

3 MR. FIERO: Your Honor, I believe that we are  
4 acknowledging that if the claims are derivative, if they  
5 actually are corporate claims, that they are resolved by this  
6 settlement and there's nothing we can do about it.

7 THE COURT: Okay.

8 MR. FIERO: But with regard to individual claims, we  
9 think that, A, the Sullivans as equity owners of the debtor  
10 certainly have standing to –

11 THE COURT: Right.

12 MR. FIERO: – to weigh in on the settlement; and, B,  
13 that this Court should not be interested in any way in resolving  
14 that dispute. It's completely outside of what's happening in  
15 this Court.

16 THE COURT: I think my discussions with Judge Orrick  
17 has been that to the extent that there are individual causes of  
18 action between the Sullivans, Finn, and WR – Winery  
19 Rehabilitation, I have no jurisdiction over that, they're not  
20 before me, and that would be something that would be decided in  
21 the district court, which will lead –

22 MR. FIERO: Yes, Your Honor. And this language that  
23 I'd like to hand up sort of goes to that –

24 THE COURT: Okay. If you – you could, you could.

25 MR. FIERO: It's in the very last paragraph, Your



1 Honor, paragraph 10.

2 THE COURT: Okay. All right, thank you.

3 MR. [SPEAKER]: Second to last.

4 MR. FIERO: Oh, I'm sorry. Second to last.

5 Is there an 11?

6 THE COURT: All right. Mr. Warden, go ahead.

7 MR. WARDEN: Thank you, Judge.

8 THE COURT: Mr. Warden, if you're more comfortable  
9 there, you're -

10 MR. WARDEN: No, I'm happy to stand. I get to sit all  
11 day.

12 Your Honor, Mr. Fiero seems to think he represents  
13 somebody other than the clients that he appears for. I'm  
14 looking at his pleading, his response, and he says in the  
15 caption: Attorneys for Equity Owners Ross, Sullivan, and  
16 Kelleen Sullivan. So I have no idea why we keep talking about  
17 any member of the Sullivan family. They don't - he doesn't  
18 represent - they have not appeared. They're not a party to this  
19 settlement. So what is it, they're asking for general releases  
20 and they're asking to modify the order. He's not a party to the  
21 settlement.

22 THE COURT: Well, let's - I guess my point would be  
23 here, assuming the others - there are, what, three other  
24 siblings - if they're not a party to it, they're not going to be  
25 bound by it. And if the trustee is just saying, 'I'm giving the

1   broadest possible release to Mr. Finn and his related entities,'  
2   okay. It wouldn't be having any effect on any individual causes  
3   of action that they might have against Mr. Finn and related  
4   entities. So whether he represents them formally or put it in  
5   writing, we've had this discussion before, Mr. Fiero had made a  
6   statement from the podium, and I think it's one of the last two  
7   hearings, indicating that those papers indicate Ross and Kelleen  
8   he does represent and his spoken with the other three siblings.  
9   I guess that's my recollection, so.

10           MR. WARDEN: Well, I just don't think there – that  
11   even mentioning them is appropriate. And I think any order that  
12   purports to deal with them is entirely ineffective. They're not  
13   before the Court. As best I know, they're not creditors. They  
14   have no standing in this Court.

15           But to the more important issue which is this order, I  
16   saw this at about 1:59 and I've not studied it.

17           THE COURT: Understood, understood.

18           MR. WARDEN: But, Your Honor, we file – or the trustee  
19   filed this entire motion on April the 3rd. Why did we wait  
20   until this afternoon to do this? There's no reason. I really  
21   think that it's a package deal. The trustee, to his credit,  
22   bent over backwards and did concede various things to Mr. Fiero.  
23   He said, 'Okay, I'll carve out. I didn't intend to affect  
24   Buchalter,' fine, I didn't object to that. But the rest of it's  
25   a package. It was a package deal. I think everybody's happy

1 with it. If I were a creditor, a trade creditor, I'd be very  
2 happy. And I think it clears a whole lot of the air and I  
3 really see no reason to disturb any of this. I agree with your  
4 —

5 THE COURT: Mr. Warden, let's — if I can stop you  
6 there, if that's the case then we have a problem with Buchalter  
7 because this was filed April 30th, why don't I have language  
8 that deals carving out Buchalter specifically? It's not  
9 anything I have.

10 MR. WARDEN: I'll defer to the trustee on that.

11 MR. OLINER: I think I might have to fall on my sword  
12 here. For one, —

13 THE COURT: I'm not blaming you. I'm just pointing  
14 out —

15 MR. OLINER: Yeah. No, you're right.

16 THE COURT: — that these are things that just happen  
17 when you're putting a settlement together.

18 MR. OLINER: A couple things. One, Mr. Warden spoke  
19 it and I need to correct it. Mr. Fiero circulated this kind of  
20 language in a form of order long before today. I was working  
21 dutifully to get these parties to come together on it. It might  
22 have been modified slightly today from what he offered before,  
23 but hardly has this sat in on ice since I filed a motion.

24 THE COURT: Right.

25 MR. OLINER: I have been circulating forms of order

1 and trying to get parties together.

2 Agnostic is kind of correct. That was Mr. Fiero's  
3 word. I want to get the deal approved and get on with the case.

4 THE COURT: Right.

5 MR. OLINER: We agreed, I think it's in the papers we  
6 filed, but not in the form of order that I have submitted to  
7 Your Honor, —

8 THE COURT: Right,

9 MR. OLINER: — the Buchalter carveout. What you said  
10 a few moments ago may be the wisest course because these — these  
11 parties —

12 THE COURT: We're not going to get it resolved yet.  
13 I'm offering an opportunity for counsel to be heard today —

14 MR. OLINER: Right.

15 THE COURT: — if there's something they want to  
16 articulate for my benefit. But I think what I'm going to have  
17 is I'm going to ask you to submit a form of order.

18 MR. OLINER: Right.

19 THE COURT: I have Mr. Warden and Mr. Fiero say, okay,  
20 — Mr. Warden might say, 'I am happy with all this' or 'I looked  
21 at what Mr. Fiero is approaching, nonsense, I don't want  
22 anything to do with it,' and then you can give me your proposed  
23 —

24 MR. OLINER: And then you pick.

25 THE COURT: — language changes, and I'll look at it.

1 And if I have a question, I'll either get you back on the phone  
2 or have another hearing if necessary.

3 MR. OLINER: Or prepare your own form of order.

4 THE COURT: Yeah. Correct.

5 MR. OLINER: Sure. That's, I think, the best way. I  
6 don't mean to cut anybody short.

7 THE COURT: All right. So, Mr. Warden, I guess my  
8 question for you today that I'm going to do this and afford  
9 everybody the opportunity, is there something that you want me –  
10 you want to bring to my attention, because absent until I  
11 actually see language that people had an opportunity, I think it  
12 might be just be premature, and the question I would have at  
13 this juncture: Does anybody have any opposition to the  
14 settlement as proposed with the understanding we've got some  
15 dispute over the language and we'll have specific language  
16 dealing with the carveout of the Buchalter firm and the  
17 attorneys who handled the case?

18 Is there something else somebody would want to add  
19 today?

20 MR. WARDEN: I've seen no opposition, Your Honor.

21 THE COURT: My – and I'm not –

22 MR. WARDEN: The last day, I think the time to object  
23 was extended –

24 THE COURT: Right.

25 MR. WARDEN: – twice.

1 THE COURT: All right.

2 MR. WARDEN: So -

3 THE COURT: What I'm prepared to do is say that the  
4 *A&C Properties* have been met here. I'm going to go ahead and  
5 approve the settlement with the understanding that Mr. Oliner  
6 will submit a form of order, provide it to Mr. Fiero and Mr.  
7 Warden, and anybody else who would like to look at that who has  
8 appeared in this case with respect to the settlement. You will  
9 have seven days after that order to submit your own order, just  
10 a brief coverletter that simply says: Here's what we had. This  
11 is the specifics.

12 I can look at it. If I'm comfortable with certain  
13 language, I could take the trustee's final, I could end up  
14 adopting, or I may get people back on the phone just to give an  
15 opportunity if I have some questions, but that's how I intend on  
16 handling this. Okay?

17 MR. OLINER: Terrific.

18 THE COURT: All right.

19 MR. FIERO: Your Honor, could I just add two points?

20 THE COURT: Go ahead.

21 MR. FIERO: The first is that, yes, I do represent all  
22 five Sullivan family members and I've got signed engagement  
23 letters that say that.

24 THE COURT: Okay.

25 MR. FIERO: I'm just double-checking my file, but I

1 know my engagement letter went to all five of them.

2 THE COURT: Okay.

3 MR. FIERO: And then with respect to this idea that  
4 the Sullivans did not object, they did object. We filed a  
5 written objection. You read from it from the bench. And the  
6 order that I handed up, you know, as a way to frame the  
7 discussion is entirely consistent with what we said in our  
8 pleading. And, with that, we'll go ahead and do the letter  
9 brief. Thank you.

10 THE COURT: Okay. Mr. Warden.

11 MR. WARDEN: May I make a few other comments?

12 THE COURT: Sure.

13 MR. WARDEN: I agree with Your Honor that Your Honor  
14 has no jurisdiction over the individuals. They're not parties.  
15 And so I – nothing Your Honor says is going to, in effect,  
16 dictate to the district court what he does. I think we can all  
17 agree on that.

18 I really don't understand why Mr. Fiero says he  
19 objected. He calls it a supplemental response and then he filed  
20 something else called a response. He didn't say objection. But  
21 if we're treating it as an objection, okay, so be it. I'm not  
22 really sure, I think the key here is the agreement itself, and I  
23 want to put on the record that the agreement is the agreement  
24 and all of this peripheral comments and all of the discussion  
25 that's gone on in any and all applications, those are all

1 subsumed within the order. The order is what governs. And I  
2 trust -

3 THE COURT: Right. And what I'm acknowledging is that  
4 I am looking in this order to specifically state, talking about  
5 the Buchalter carveout. There is a 9th Circuit decision that  
6 just came down talking about a consensual statement and how  
7 things might affect issue or claims preclusion. This is a  
8 consensual agreement that has been reached between the parties,  
9 but I wanted - but see the language on the carveout for the  
10 Buchalters, there is an issue that any individual causes of  
11 action that the Sullivans have are not included. The trustee is  
12 only giving the broadest release as to claims that the estate  
13 has against Mr. Finn and the related entities.

14 With that being said, I'm approving the compromise.

15 And I guess the next question I have, assuming we get  
16 over the hurdle of getting the agreed language, is: Where do we  
17 go from here? Because, as I see it, we have Mr. Warden's  
18 clients' claims, we have objections to the same. The trustee is  
19 going to be in a position as a result of the subordination to  
20 pay all of the quarter of a million in trade creditors, but then  
21 we have the action pending before Judge Orrick.

22 And the question I'm raising is this something that  
23 would make more sense for the reference to be withdrawn,  
24 possibly? So that it's all before Judge Orrick or just let  
25 Judge Orrick deal with his end of the litigation, we put



1 everything on hold here, or do we pursue – I don't know how we  
2 pursue the claims litigation here until potentially that lawsuit  
3 – because that part of your claim is – is based on  
4 indemnification. So I don't need answers today, but I want you  
5 to think about this, how we're going to proceed going forward.

6 Mr. Oliner.

7 MR. WARDEN: Your –

8 MR. OLINER: I have some comments, but I will wait –

9 THE COURT: Let me hear from trustee's counsel first.

10 MR. WARDEN: If I can respond, I think I can answer  
11 one of the questions the Court posed. You said what if there  
12 were an action that potentially was – could be brought by the  
13 Sullivans, but they both had a derivative claim, or words like  
14 that, let's remember the rules.

15 Derivative claims, the proceeds are paid to the  
16 estate, paid to the trustee. They are not paid to the  
17 individuals. And, remember, Mr. Finn has not one, not two, but  
18 three forms of indemnity, plus the *Siegel* (phonetic) case. And  
19 one of the cases we're settling today is the adversary. And the  
20 first claim for relief says, I object to the – one of Mr. Finn's  
21 claims – that's been paid. It's been paid in full. It's *res*  
22 *judicata* under the 9th Circuit law. So I don't really think  
23 there is a whole lot of mystery here. I think it's, frankly,  
24 pretty simple.

25 I'm – I would argue against removing the reference. I

1       —

2               THE COURT: I just threw it out. I'm not — I'm not —  
3 I was just saying I won't — I'm trying to get just an  
4 understanding as how we're going to move forward in the  
5 bankruptcy court and what the timing and what are the parties  
6 thinking about, just for my edification.

7               So, Mr. Oliner, if you could tell me —

8               MR. OLINER: From here? Sure.

9               THE COURT: Yes.

10              MR. OLINER: Sure. Unless you want me to —

11              THE COURT: No, from there is fine.

12              MR. OLINER: Thank you. So the trustee has certainly  
13 given some thought to what happens after we get through the  
14 hump, the hurdle, as it were. And, you know, we have a pot of  
15 money. After today, we have considerably fewer folks who want  
16 it or have rights to it.

17              Conversion, that's going to delay folks. It's another  
18 trustee, a set of lawyers. It's going to deplete further.  
19 Where I think I've heard you say, I have the sense that you know  
20 the — the trustee, my client's done a yeoman's job. So where we  
21 come out is probably a very simplified process, a pot plan. It  
22 would be a plan and disclosure statement. We'll flesh this out  
23 at a status conference statement we will file a week before the  
24 21st, which is where you have continued the Chapter 11 status —

25              THE COURT: Right.

1           MR. OLINER: - conference, where either through the  
2 plan crucible, most likely, we will immediately pay out the  
3 trade creditors. And then Jim Hoffman, assuming he is the  
4 liquidating agent or otherwise, the fellow who is still standing  
5 on the other side of confirmation, he just holds the money.

6           THE COURT: Okay.

7           MR. OLINER: As you have correctly pointed out, Judge  
8 Orrick has to figure out - you know, the claims of Finn, these  
9 indemnity claims, have to be liquidated to or objected to. The  
10 intercompany claim isn't liquidated. And then the question is  
11 in these administratively-consolidated estates, who is getting  
12 what. So a highly-inactive - if that's a proper connection of  
13 the words - liquidating trustee on the other side of a very  
14 simplified confirmation, it seems to us, the trustee hasn't  
15 taken a position on who gets what so much as just sitting back,  
16 not billing much time, -

17          THE COURT: Gotcha.

18          MR. OLINER: - holding money. That's how we see the  
19 future.

20          THE COURT: Okay, all right.

21          MR. OLINER: Tentatively.

22          THE COURT: All right. Then that's - answers the  
23 question I have today, so I'm approving this. I'll look for an  
24 order. Again, circulate it. After you receive it, file it with  
25 the Court. Then in seven days after that, if there's a

1 disagreement, submit a letter with your proposed language for  
2 either whatever sections of the order that you have a  
3 disagreement with, then I'll look at that. And if I have  
4 questions, I'll get you back on the phone or require another  
5 hearing, if necessary, but it will most likely with be resolved  
6 with a phone call, if that at all.

7 MR. OLINER: I think you can anticipate that by  
8 tomorrow we will have done our part, we will - no disrespect -  
9 submit the form of order that we had previously agreed to  
10 without the new language.

11 THE COURT: Okay.

12 MR. OLINER: I have no doubt pursuant to the comments  
13 made that within the lodging period, Mr. Fiero will offer his  
14 language, and you decide.

15 THE COURT: Okay, very good. All right.

16 MR. OLINER: Thank you.

17 THE COURT: Thank you very much.

18 MR. WARDEN: Thank you, Your Honor.

19 MR. FIERO: Thank you, Your Honor.

20 (The hearing was adjourned at 2:50 o'clock p.m.)

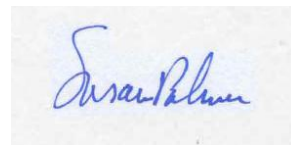
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State of California                    )  
  )     SS.  
County of San Joaquin                )

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I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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Dated May 23, 2019  
(Corrected transcript  
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